

**REAL ESTATE PURCHASE AND SALE AGREEMENT
FOR A PERPETUAL CONSERVATION EASEMENT**

This REAL ESTATE PURCHASE AND SALE AGREEMENT FOR A PERPETUAL CONSERVATION EASEMENT ("Agreement") is made by and between OLYMPIA COALITION FOR ECOSYSTEMS PRESERVATION, a Washington nonprofit corporation ("Seller"), and the CITY OF OLYMPIA, a municipal corporation organized under the laws of the State of Washington ("Buyer"), and together with Seller, known as the "Parties". This Agreement shall not be effective until the Effective Date (as defined in Section 15.14 below).

RECITALS

A. Seller is the owner of that certain real property located in the City of Olympia, Thurston County, Washington, consisting of two (2) adjoining parcels of land approximately totaling a combined 4.54 acres, more or less, and is legally described on Exhibit A attached to this Agreement (the "Property"). The Property is also commonly known hereafter as the "Conservation Property."

B. Buyer previously determined that the Conservation Property was suitable for conservation for wildlife habitat, a wildlife corridor, and its natural, scenic, ecological, educational, scientific, open space and passive recreational purposes, and as an established nesting ground for the Pacific Great Blue Heron, all for the benefit of present and future generations of Olympia's residents and citizens. Buyer thereafter sought to obtain a perpetual conservation easement from Seller by purchase of a Conservation Easement upon the Conservation Property for such purposes.

C. It is the intent of the Parties that the wildlife habitat, natural, scenic, ecological, open space, educational and scientific values of the Conservation Property (the "Conservation Values") be preserved and maintained in perpetuity. The Parties agree to be bound by the terms and conditions of a Conservation Easement upon the Conservation Property to be purchased by Buyer and as described in Exhibit C.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Conservation Property.** Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the following:

1.1 Grant Deed of Conservation Easement. A Conservation Easement upon Seller's real property consisting of land approximately totaling a combined 4.54 acres, more or less, constituting the Conservation Property legally described on Exhibit A to this Agreement and generally shown on a sketch attached as Exhibit B to this Agreement.

1.2 Purpose. Buyer's purchase of a Conservation Easement upon Seller's real property is to preserve, protect, and maintain the Conservation Property in perpetuity.

2. Escrow. Within three (3) business days of the Effective Date of this Agreement, the Parties shall open an escrow account for the transaction contemplated by this Agreement with Thurston County Title Company at 105 East 8th Avenue, Olympia, Washington 98501 (in such capacity, "Escrow Company"). Escrow Company will serve as escrow agent for Closing of this Agreement ("Escrow Agent"). The Parties shall deliver a fully executed copy of this Agreement to Escrow Agent, along with a copy of Buyer's resolution authorizing Buyer's purchase of the Conservation Easement granted by Seller under this Agreement.

3. Purchase Price. The purchase price to be paid by Buyer to Seller for the Conservation Easement upon Seller's Property (the "Purchase Price") is SIXTY THOUSAND DOLLARS and NO CENTS (\$60,000.00).

4. Payment of Purchase Price. On the Closing Date, Buyer shall deposit with Escrow Company the sum of SIXTY THOUSAND DOLLARS and NO CENTS (\$60,000.00).

5. Closing Date. The closing of the purchase and sale of the Conservation Easement upon the Conservation Property under this Agreement (the "Closing") shall be held at or through the offices of the Escrow Company on a date that is mutually acceptable to the Parties s after the Effective Date of this Agreement and on or before July 31, 2017 (the "Closing Date") or a time mutually agreed upon in writing by the Parties. Closing shall occur when the Grant Deed of Conservation Easement (as described in Exhibit C) to Buyer is recorded, and the Purchase Price set forth in Section 4 has been delivered to the Escrow Company for delivery to Seller.

6. **Title and Survey Matters.**

6.1 Title Binder. The Buyer may order a title report describing the Conservation Property and showing all title matters of record pertaining to the Conservation Property. Such report shall set forth conditions or exceptions to title to the Conservation Property. Nothing herein shall be construed as imposing any cost obligation upon Seller.

6.2 Title Review. Within seven (7) business days after Buyer's receipt of the title report ("Title Review Period"), Buyer shall notify Seller what exceptions to title, if any, are unacceptable. If no title matters appear in the title report that are unacceptable to Buyer, then the Parties shall proceed to Closing as set forth in this Agreement. If any title matters appear and Buyer objects to any of the same during the Title Review Period, then

Seller shall have seven (7) business days after receiving Buyer's objection notice to notify Buyer if Seller will remove any of the exceptions objected to prior to the Closing Date or if Seller elects not to remove such objected to exceptions. Failure of Seller to timely respond shall be deemed an election not to cure or remove such objected to exceptions. If Seller elects not to remove any exceptions objected to, or is deemed to have elected not to remove any exceptions, or if Seller agrees to remove any objected to exceptions and fails to remove the same from title prior to Closing, and Buyer is unwilling to take title subject thereto, then Buyer shall notify Seller thereof before Closing and this Agreement shall terminate. In the event of termination under this paragraph, the Agreement will terminate in full, Buyer shall be entitled to a return of its funds and neither Seller nor Buyer shall thereafter have any further liability or obligation under this Agreement. Seller shall not be required to incur any expense in order to render its title marketable or to remove any matter disapproved by Buyer; provided that, Seller shall not refuse to remove any disapproved item that involves only payment of a monetary obligation of Seller secured by a lien or other encumbrance on the Conservation Property.

7. Conditions to Buyer's Obligations.

7.1 Closing Conditions. Buyer's obligation to purchase a Conservation Easement upon the Conservation Property shall also be subject to the following conditions that must be satisfied as of Closing:

(i) All representations and warranties of Seller contained in this Agreement shall be true, accurate and complete as of the Effective Date and the Closing Date;

(ii) Seller shall have performed all obligations to be performed by it under this Agreement on or before the Closing Date (or, if earlier, on or before any other date set forth in this Agreement for such performance);

(iii) At Closing, title to the Property shall be in the condition required by Section 6 of this Agreement;

(iv) Purchase of the Conservation Easement by Buyer is contingent upon Seller separately purchasing and acquiring adjacent real property identified by Assessor's Tax Parcel No. 0903-00-05000. If Seller fails to purchase and acquire the real property described in this subsection 7.1(iv) on or before the Closing Date, Buyer may terminate this Agreement and receive a full refund of Buyer's monies and this Agreement shall have no further force or effect.

If the conditions set forth in this Section 7.1 are not satisfied as of the Closing Date and Buyer does not waive the same, Buyer or Seller may terminate this Agreement by written notice given to the other Party, and thereafter neither Buyer nor Seller shall have any further liability one to the other under this Agreement, and, except as provided otherwise in

this Agreement, Buyer shall be entitled to receive a return of its funds deposited with Escrow Company.

8. Representations.

8.1 By Seller. Seller represents and warrants the following to Buyer: (a) Seller is the record title owner of the Conservation Property; and (b) Seller has all necessary power and authority to enter into this Agreement.

8.2 By Buyer. Buyer represents and warrants the following to Seller: (a) Buyer is a municipal corporation organized under the laws of the State of Washington; (b) the person executing this Agreement below has the necessary power and authority to enter into this Agreement and to bind Buyer; (c) prior to executing this Agreement, this Agreement was approved by all necessary action of the Olympia City Council and all other actions have been taken as may be required under any laws applicable to the City's power and authority to carry out its obligations under this Agreement; and (d) this Agreement constitutes the legal, valid, binding and enforceable obligation of Buyer. If any of Buyer's representations or warranties are not true and complete as of the Effective Date and again at Closing, Seller shall have the right to terminate this Agreement.

9. Seller Provision of Further Information. From the Effective Date to the Closing Date, Seller will notify Buyer of any event of which Seller becomes aware materially affecting the Property or any part thereof immediately upon learning of the occurrence of any such event.

10. Further Closing Procedures.

10.1 Time and Place. Provided that all the contingencies set forth in this Agreement have been previously fulfilled, the Closing shall take place at the place and time determined as set forth in Section 5 of this Agreement above.

10.2 Documents to be Delivered by Seller. For and in consideration of, and as a condition precedent to the payment to Seller of the Purchase Price for a Conservation Easement, Seller shall obtain and deliver to Buyer at Closing the following documents (all of which shall be duly executed and acknowledged where required):

(i) A grant deed of Conservation Easement ("Conservation Easement"), substantially in the form attached as **Exhibit C**, conveying to Buyer a Conservation Easement to the Conservation Property, free and clear of all liens, encumbrances, conditions, easements, assignments, and restrictions, unacceptable to Buyer.

(ii) Such evidence as the Title Company or Escrow Company shall require as to authority of Seller to convey the Conservation Easement for the Conservation Property to Buyer.

10.3 Delivery by Buyer. Buyer shall deliver the Purchase Price to Seller at Closing.

11. Payment of Costs. Seller and Buyer shall pay their own respective costs incurred with respect to the consummation of the purchase and sale of the Conservation Easement upon the Conservation Property including, without limitation, attorneys' fees. Notwithstanding the foregoing, Buyer shall pay the premium or fees for any Title Policy or title reports issued by Title Company to Buyer, the fee to record the Grant Deed of Conservation Easement, and the escrow fee. Seller shall pay any real estate excise tax that may be due upon the sale of the Conservation Easement for the Conservation Property.

12. Monetary Liens. Seller shall pay or cause to be satisfied at or prior to Closing all recorded monetary liens on or with respect to all or any portion of the Conservation Property, including, but not limited to, mortgages, deeds of trust, security agreements, assignments of leases, judgment liens, tax liens (other than those for taxes not yet due and payable) and financing statements.

13. Possession. Possession and use of the Conservation Easement upon the Conservation Property shall be delivered to Buyer at Closing.

13.1 As-Is Condition. BUYER ACKNOWLEDGES THE PROPERTY IS "AS IS WHERE IS" IN ITS PRESENT CONDITION. BUYER HAS THE OPPORTUNITY TO INSPECT THE PROPERTY AND DOCUMENTATION IN SELLER'S POSSESSION AS PROVIDED HEREIN. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT OR THE CLOSING DOCUMENTS, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO, HEREBY DISCLAIM AND SHALL HAVE NO LIABILITY FOR: (A) THE CONDITION OF THE PROPERTY OR ANY BUILDINGS, STRUCTURES OR IMPROVEMENTS THEREON OR THE ROOFS, STRUCTURAL COMPONENTS, OR HEATING, VENTILATING, AIR CONDITIONING, MECHANICAL, PLUMBING, ELECTRICAL, OR FIRE AND LIFE SAFETY SYSTEMS THEREON OR THEREIN OR THE SUITABILITY OF THE PROPERTY FOR HABITATION OR FOR BUYER'S INTENDED USE; (B) ANY APPLICABLE BUILDING, ZONING OR FIRE LAWS OR REGULATIONS OR WITH RESPECT TO COMPLIANCE THEREWITH OR WITH RESPECT TO THE EXISTENCE OF OR COMPLIANCE WITH ANY REQUIRED PERMITS, IF ANY, OF ANY GOVERNMENTAL AGENCY; (C) THE AVAILABILITY OR EXISTENCE OF ANY WATER, SEWER OR UTILITIES, ANY RIGHTS THERETO, OR ANY WATER, SEWER OR UTILITY DISTRICTS; (D) ACCESS TO ANY PUBLIC OR PRIVATE SANITARY SEWER OR DRAINAGE SYSTEM; OR (E) THE PRESENCE OF ANY HAZARDOUS SUBSTANCES AT THE PROPERTY OR IN ANY IMPROVEMENTS ON THE PROPERTY, INCLUDING WITHOUT LIMITATION ASBESTOS OR UREA-FORMALDEHYDE, OR THE PRESENCE OF ANY ENVIRONMENTALLY HAZARDOUS WASTES OR MATERIALS ON OR UNDER THE PROPERTY. WITHOUT

LIMITING THE GENERALITY OF THE FOREGOING, AND EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT OR THE CLOSING DOCUMENTS, SELLER SHALL HAS NO LIABILITY WITH RESPECT TO THE CONDITION OF THE PROPERTY UNDER COMMON LAW, OR ANY FEDERAL, STATE, OR LOCAL LAW OR REGULATION, INCLUDING BUT NOT LIMITED TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980 AS AMENDED, 42 U.S.C.A. SECTIONS 9601 ET SEQ., OR APPLICABLE WASHINGTON LAW, AND BUYER HEREBY RELEASES AND WAIVES ANY AND ALL CLAIMS WHICH THE BUYER HAS OR MAY HAVE AGAINST THE SELLER WITH RESPECT TO THE CONDITION OF THE PROPERTY. BUYER ACKNOWLEDGES THAT BUYER IS GIVEN THE OPPORTUNITY UNDER THIS AGREEMENT TO FULLY INSPECT THE PROPERTY AND BUYER ASSUMES THE RESPONSIBILITY AND RISKS OF ALL DEFECTS AND CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUCH DEFECTS AND CONDITIONS, IF ANY, THAT CANNOT BE OBSERVED BY CASUAL INSPECTION.

14. Default.

14.1 By Buyer. If Buyer defaults under any material provision of this Agreement and does not cure such material default after a ten (10) day notice and opportunity to cure is given by Seller, Seller may terminate this Agreement by notice given to Buyer.

14.2 By Seller. If Seller defaults under any material provision of this Agreement and does not cure such material default after a ten (10) day notice and opportunity to cure is given by Buyer, then Buyer may terminate this Agreement by notice given to Seller.

15. Miscellaneous.

15.1 Applicable Law. This Agreement shall in all respects, be governed by the laws of the State of Washington. Venue for any lawsuits concerning this Agreement shall be in Thurston County Superior Court.

15.2 Further Assurances. Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, to carry out the mutual intent of the Parties hereto.

15.3 Modification or Amendment, Waivers. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by both of the Parties. Except as otherwise expressly set forth in this Section, this Agreement may only be amended, modified, or changed by a traditional written document properly executed by Seller and Buyer. Such amendment may be transmitted by e-mail, facsimile, or other method permitted by the provisions for giving notice in this Agreement. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof or of any other covenant or provision in this Agreement. No

extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

15.4 Successors and Assigns. All of the terms and provisions contained in this Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective heirs, legal representatives, successors and permitted assigns. Buyer shall not be permitted to assign this Agreement, or any part hereof, to any other party.

15.5 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matters of this Agreement, and any and all other prior agreements, understandings or representations with respect to the subject matters of this Agreement are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties.

15.6 Attorneys' Fees. Should either Party bring suit to enforce or interpret this Agreement, the prevailing Party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

15.7 Construction. Captions are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it.

15.8 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; and each such remainder term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15.9 Survival. The covenants, agreements, representations and warranties made in this Agreement shall survive the Closing unimpaired and shall not merge into the Grant Deed of Conservation Easement or the recordation of the Grant Deed of Conservation Easement.

15.10 Finders' or Brokers' Fees. Seller and Buyer each hereby represent and warrant to the other that no broker, agent or finders' fees or commissions, or other similar fees, are due or arising in connection with any of the transactions contemplated by this Agreement. Seller and Buyer each hereby agree to indemnify, defend and hold the other harmless from and against any loss, liability, damage, cost, damage, claim or expense, including interest, penalties and reasonable attorneys' fees, the other Party shall incur or suffer because of any claim by a broker, agent, or finder claiming by, through, or under such indemnifying Party, whether or not such claim is meritorious, for any compensation with respect to the entering into of this Agreement, the sale and purchase of the Property, or the consummation of the transactions contemplated herein.

15.11 Time. Time is of the essence of every provision of this Agreement. If the date on which Buyer or Seller is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

15.12 Force Majeure. Performance by either Party of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the Party obligated to perform (but excluding financial inability to perform, however caused).

15.13 Counterparts. This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Agreement may be combined to form multiple fully-executed counterparts; and (ii) a facsimile signature or an electronically scanned signature, where permitted, shall be deemed to be an original signature for all purposes. All executed counterparts of this Agreement shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same agreement.

15.14 Effective Date. The term "date of this Agreement" or "date hereof" or "Effective Date", as used in this Agreement, shall mean the later of the following dates: (1) the date of Buyer's signature on this Agreement; or (2) the date of Seller's signature on this Agreement.

15.15 Notices. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, "Notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such Notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given twenty-four (24) hours after the deposit thereof with such delivery service. If such Notice is mailed as provided herein, such shall be deemed given forty-eight (48) hours after the deposit thereof in the United States mail. Each such Notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To Seller: Olympia Coalition for Ecosystems Preservation
Attn: Daniel Einstein
1007 Rogers Street NW
Olympia, WA 98502
Email: daniel@olyecosystems

With copy via email to: Joseph A. Rehberger
Cascadia Law Group PLLC
606 Columbia Street NW, Suite 212
Olympia, WA 98501
Email: jrehberger@cascadialaw.com

To Buyer: Steven R. Hall, City Manager
City of Olympia
P.O. Box 1967
Olympia, WA 98507-1967
Email: shall@ci.olympia.wa.us
Phone: (360) 753-8447

With copies to: Mark Barber, City Attorney
City of Olympia
P.O. Box 1967
Olympia, WA 98507-1967
E-mail: mbarber@ci.olympia.wa.us
Phone: (360) 753-8338

Any party hereto may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

SELLER:

**OLYMPIA COALITION FOR ECOSYSTEMS
PRESERVATION**, a Washington nonprofit
corporation

DANIEL EINSTEIN, PhD, President

Date: _____

BUYER:

CITY OF OLYMPIA, a Washington municipal
corporation

By: _____

Print: Steven R. Hall

Its: City Manager

Date: _____

APPROVED AS TO FORM:



Mark Barber, City Attorney

Date: 6/13/2017

EXHIBIT A

**Olympia Coalition for Ecosystems Preservation
Legal Descriptions**

Parcel No. 6740-00-03600

Lots 36, 37 and 38 of Parker and Hays Plat, as recorded in Volume 1 of Plats, page 16.

SUBJECT TO EXCEPTIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS AND AGREEMENTS OF RECORD.

Situate in County of Thurston, State of Washington.

Parcel No. 0903-00-02001

That part of Austin Donation Claim No. 49, Section 10, Township 18 North, Range 2 West, W.M., described as follows:

Beginning at a point on the North line of said Austin Claim, 500 feet West of the intersection of the Westerly line of West Bay Drive therewith; running thence West along said North line of claim 500 feet, more or less, to a point 150 feet East of East line of North Rogers Street; thence Southerly parallel with said street 200 feet, more or less; thence East 500 feet, more or less, and North 200 feet to the point of beginning: EXCEPTING the West 100 feet thereof.

SUBJECT TO EXCEPTIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS AND AGREEMENTS OF RECORD.

Situate in County of Thurston, State of Washington.

EXHIBIT B
Site Map

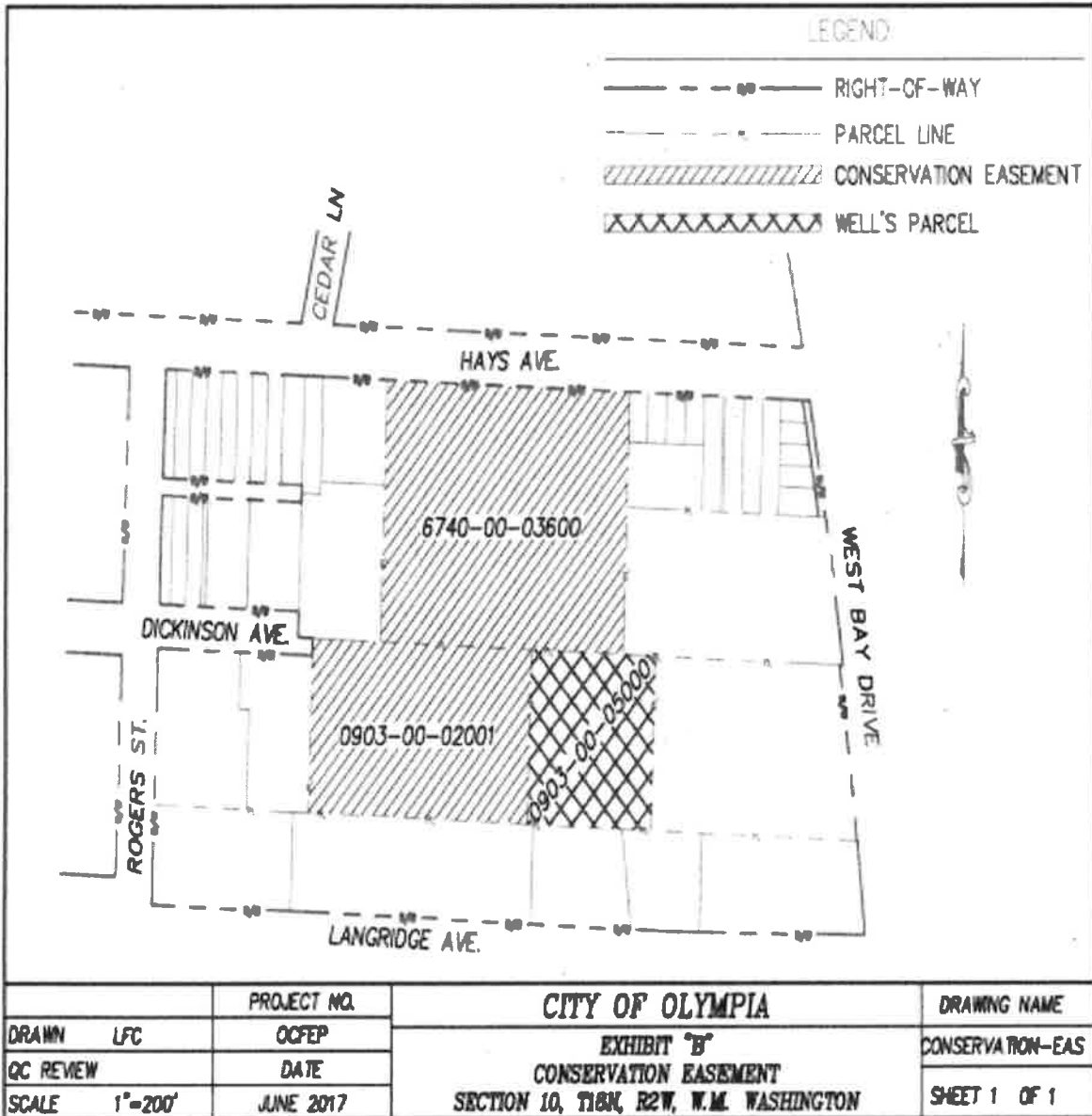


EXHIBIT C

Form of Grant Deed of Conservation Easement

AFTER RECORDING MAIL TO:

When Recorded Return To:

Legal Department
City of Olympia
P.O. Box 1967
Olympia, WA 98507

Document Title(s) (or transactions contained therein):

Grant Deed of Conservation Easement

Reference Number(s) of Documents assigned or released:

N/A

Grantor(s) (Last name first, then first name and initials):

Olympia Coalition for Ecosystems Preservation

Grantee(s) (Last name first, then first name and initials):

Olympia, City of

Legal description:

Lots 36, 37, and 38 of Parker and Hays Plat; and

Austin DC Claim 500 F W of X N LN DC with W LN WEST BAY DR W 400

Full legal description is on page(s) Exhibit A of document.

Assessor's Property Tax Parcel/Account Numbers:

6740-00-03600, 0903-00-02001

Grantor: Olympia Coalition for Ecosystems Preservation
Grantee: City of Olympia, Washington

Abbreviated Legal Description: PTN of SW ¼ SE ¼ of Section 10, Township 18 North,
Range 2 West, W.M

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT by and between the Olympia Coalition for Ecosystems Preservation, a Washington nonprofit corporation (hereinafter “Grantor”), and the City of Olympia, a Washington municipal corporation (hereinafter “Grantee”), is made with reference to the following facts:

I. Recitals

A. Grantor is sole owner in fee simple of the Conservation Property that is the subject of the Conservation Easement, more particularly described in “**Exhibit A**” (Legal Description of Property Subject to Easement) and shown on “**Exhibit B**” (Site Map), consisting of two (2) adjoining parcels of land upland of Budd Inlet and West Bay Drive, City of Olympia, Thurston County, Washington, totaling a combined approximately 4.54 acres, more or less (hereinafter, “**Conservation Property**”).

B. Grantor is a Washington nonprofit corporation, a tax-exempt nonprofit organization, qualified under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and a nonprofit nature conservancy corporation, qualified under RCW 64.04.130 and RCW 84.34.250, whose primary purpose is to “protect, preserve and restore the diverse ecosystems of Olympia, Washington that include the freshwater, shoreline, tidal waters, and upland forests that are home to the Pacific Great Blue Heron, cutthroat trout, salmon, and companion species” and to work to “ensure that these ecosystems remain vital in perpetuity.”

C. The Grantor and Grantee have agreed to a Sixty Thousand and no/100 dollars (\$60,000 USD) purchase price for the Conservation Easement covering the Conservation Property.

D. Grantor and Grantee intend that the wildlife habitat, natural, scenic, ecological, open space, and educational values of the Conservation Property (the “Conservation Values”) be preserved and maintained in perpetuity. Grantor and Grantee agree to be bound by the terms and conditions of this Conservation Easement.

E. This Conservation Easement consists of forested habitat lands and forested lands upland of Budd Inlet and West Bay Drive and within the City of Olympia. This Conservation Easement will enhance and protect the Conservation Property, which property adjoins and is part of a larger conservation area and wildlife corridor which has been an established nesting grounds for the Pacific Great Blue Heron (*Ardea Herodias fannini*). The Pacific

Great Blue Heron is a unique subspecies of Great Blue Herons whose range is exclusively the interior coast of Washington and British Columbia, and is part of larger forested riparian areas that collectively provide valuable habitat for a variety of important wildlife species, including cutthroat trout, salmon, and companion and other species. This Conservation Easement will ensure that the Conservation Property will be retained forever predominantly in its natural condition, and to prevent any use of the Conservation Property that will impair or interfere with the Conservation Values.

F. Preservation of the Conservation Property in its current forested state and undeveloped condition and providing for conveyance of all future development rights, except as reserved in Section V below, to Grantee, in perpetuity, is important to the Grantor and the Grantee.

II. Conveyance and Consideration

A. For the reasons stated above and in consideration of the mutual covenants contained herein and the payment to the Grantor of the sum of Sixty Thousand and no/100 dollars (\$60,000 USD) by the Grantee, in hand paid, the Grantor hereby bargains, sells, and conveys to the Grantee, and its assigns, a perpetual Conservation Easement over the Conservation Property, consisting of the rights in the Conservation Property herein enumerated, subject to the restrictions set forth herein.

B. This conveyance is an interest in real property and is made as an absolute, unconditional, unqualified, and complete conveyance subject to the mutual covenants and restrictions set forth herein.

C. This Conservation Easement deed shall be recorded in Thurston County, Washington.

III. Purpose

A. The purpose of this Conservation Easement is to preserve, protect, and maintain the Conservation Property.

B. Grantor and Grantee intend and hereby agree that the Conservation Property shall not be converted or directed to any uses other than those provided herein.

IV. Grantee's Rights

A. The rights conveyed to the Grantee by this Conservation Easement are the following:

1. To preserve and protect in its current natural state, in perpetuity, those natural elements that enhance the natural, functional value of the Conservation Property as a habitat for the Pacific Great Blue Heron, and for fish, birds, waterfowl, and other wildlife;

2. To prevent activities from occurring within the Conservation Property inconsistent with the purposes of this Conservation Easement;

3. Upon forty-eight (48) hours' advance notice to the Grantor, the Grantee or Grantee's representative may perform such activities on the Conservation Property as the Grantee determines are necessary or convenient to carry out the rights granted by this Conservation Easement, including the right to monitor the uses and activities on the Conservation Property to determine whether they are consistent with this Conservation Easement and the right to enter and perform activities that will promote the purposes of this Conservation Easement as stated in Section III, where the Grantee has determined such activity is appropriate pursuant to the purposes set forth in Section III; and

4. Upon forty-eight (48) hours' advance notice to the Grantor, to enter upon the Conservation Property in a manner that does not unreasonably disturb the use of the Conservation Property by the Grantor and where appropriate allow other persons to enter the Conservation Property to (1) perform or enforce the rights herein granted and to determine that the Conservation Property is being used in compliance with the terms of the Conservation Easement, and (2) to observe and study the Conservation Property for educational and scientific purposes or for other purposes consistent with the purposes of this Conservation Easement. The Grantee shall also have the right of immediate entry to the Conservation Property if, in its sole judgment, such entry is necessary to prevent damage to or the destruction of the Conservation Values, provided that notification is given to Grantor within seventy-two (72) hours after entry.

B. Grantor relinquishes and conveys its rights of development in the Conservation Property to Grantee, except as expressly reserved herein to Grantor.

C. Unless specifically provided, nothing herein shall be construed as affording the general public any interest in any portion of the Conservation Property subject to this Conservation Easement.

D. The Grantee's enforcement of the terms and conditions of this Conservation Easement shall be at the discretion of the Grantee, subject to Section VII, below. Any forbearance to exercise its rights hereunder in the event of any breach of this Conservation Easement by the Grantor, its successors or assigns, or any other person or entity, shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent breach.

V. Reserved Rights, Uses, and Activities Subject to the Easement

Grantor reserves all rights as beneficial owner of the Conservation Property including the right to engage in or permit or invite others to engage in all uses of the Conservation Property which are not prohibited herein and which are consistent with the purposes of this Conservation Easement. So long as the Grantor's uses are not prohibited and are consistent

with the purposes of this Conservation Easement, and without limiting the foregoing reserved rights, the Grantee agrees that the following uses are included within the Grantor's reserved rights and are permitted and allowed:

- A. To restore and maintain the Conservation Property, including the removal of invasive species, establishment, re-establishment, and maintenance of native plants, trees, and understory.
- B. To protect, manage, and regulate the harvesting of minor forest products including but not limited to brush, grasses, firewood, and mushrooms on the Conservation Property according to applicable state and federal law;
- C. To engage in, and allow others to engage in, recreational or educational activities on the Conservation Property. Recreational activities may include, but are not limited to, passive recreation, walking trails, picnicking, and hiking. Grantor, upon thirty (30) days' notice to Grantee, may cut trees in order to create trails for recreational or educational activities;
- D. To build one (1) picnic shelter and one (1) low-impact restroom facility. A low-impact restroom may include a composting toilet or a facility that is self-contained and routinely pumped out for management of sewage off-site;
- E. To remove from the Conservation Property wind-thrown, fallen, dangerous or diseased trees or vegetation posing a threat to public safety or threaten the health of the resources on the Conservation Property or the properties adjoining the Conservation Property, together with invasive trees, plants, bushes, shrubbery, or other vegetation as now exists or may come to exist in the future;
- F. To maintain existing access roads across the Conservation Property, consistent with the limitations set forth in Section VI (C);
- G. To construct, re-construct, and maintain rain gardens, following the best practices, as outlined in the Rain Garden Handbook of Western Washington: A Guide for Design, Installation, and Maintenance (ECOLOGY PUB. NO. 13-10-027) (June 2013), including any future updates or revisions thereto;
- H. To retain any and all tax or density credits or benefits from or attributable to the Conservation Property which may be available under state, federal or local law, ordinances, rules or regulations for the development of Grantor's properties.

VI. Prohibited and Inconsistent Uses

The following uses and practices within the Conservation Property are prohibited:

- A. To thin or harvest timber, or to remove any trees, whether standing or on the ground, with the exceptions set forth in Section V above.
- B. To change, disturb, alter, or impair the Conservation Property except as provided in Section V above;
- C. To exceed a total of two (2) percent of the total surface area of the Conservation Property with impervious surfaces, except with the prior written approval of the Grantee. An impervious surface means any hard surface areas that either prevent or retard the entry of water into the soil mantle as under natural condition before development or that cause water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions before development. Including, but not limited to, paved and graveled roads, or other surfaces that similarly impede the natural infiltration of surface and storm water.
- D. To store, dump, or otherwise dispose of toxic and/or hazardous materials or refuse, animal carcasses, wildlife-attracting materials, or any other material which could reasonably be considered debris except as authorized in Section V above.
- E. To convert native vegetation to exotic species or the introduction of non-native plant species, farming, plowing, or any type of non-silvicultural cultivation;
- F. To introduce or release non-native animal species;
- G. To graze or pasture livestock;
- H. To construct or place any buildings, mobile homes, billboards, utility towers or other structures, except as authorized in Section V, or with the prior written approval of the Grantee;
- I. To apply biocides, herbicides, defoliants, chemical fertilizers, sewage sludge, or other chemicals, except with the prior written approval of the Grantee;
- J. To change the topography of the Conservation Property by placing on it any soil, dredging spoils, land fill, or other material, or by extraction of minerals or hydrocarbons on or below the surface of the Conservation Property, except with the prior written approval of the Grantee;
- K. To change the topography or surface hydrology or divert or cause the diversion of surface or underground water into, within or out of the Conservation Property, except as authorized in Section V above, without the prior written approval of the Grantee;
- L. To cause, encourage or permit fire as a land management method or tool, other than those naturally caused;

M. To grant additional easements, rights-of-way, or other interests in the Conservation Property without the prior written authorization and consent of the Grantee;

N. To legally subdivide, record a subdivision plan, partition, or any other division of the Conservation Property into parcels;

O. Any use inconsistent with the purposes of this Conservation Easement as listed in Section III above.

VII. Approval / Remedies / Enforcement

A. Where Sections V, VI, or this Section requires written approval from the Grantee, those requests shall be submitted in writing to the City of Olympia's Director of Parks, Arts, and Recreation. Before determining an activity is inconsistent with the terms of this Conservation Easement, the Grantee will consult with the Grantor. The Grantee's decision on whether to grant or deny such approval shall be final.

B. Where Sections require written approval from the Grantor or notice to the Grantor, those requests shall be submitted to the Board of Directors of the Olympia Coalition for Ecosystems Preservation.

C. If the Grantee or Grantor determines that there is a violation of the terms of this Conservation Easement or that a violation is threatened, such party shall give written notice to the other party of such violation and demand corrective action sufficient to cure the violation or threatened violation, and where the violation involved injury to the Conservation Property resulting from any use or activity inconsistent with this Conservation Easement, to restore, where possible, the portion of the Conservation Property so injured. In any instance, measures to cure the violation shall be reviewed and approved in advance, in writing, by the Grantee. If a party fails to cure a violation within sixty (60) days after receipt of notice thereof from the party or, under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to continue diligently to cure such violation until finally cured, the aggrieved party may bring an action at law or in equity in the Superior Court of Thurston County, Washington to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any Conservation Values, including monetary damages, and where possible, to require restoration of the Conservation Property to the condition that existed prior to any such injury. Grantor and Grantee expressly consent to the jurisdiction of said Court for the purpose of adjudicating actions at law or in equity to enforce the terms of the Conservation Easement and to enjoin violations.

D. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against the Grantor or for the Grantor to bring any action against the Grantee for any injury to, or change in the Conservation Property resulting from force majeure. Force

Majeure, for the purposes of this Conservation Easement, is defined as any event arising from causes beyond the control of Grantor, or persons or entities acting on behalf of or at the direction of Grantor or the Grantee, such as but not limited to earthquake, volcanic eruption, fire, war, terrorism, or civil disturbance. Any force majeure event shall be reported to the parties' designated representatives, where possible as it is occurring, or within seventy-two (72) hours.

E. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement and which would render the provision valid, shall be favored over any interpretation that would render it invalid.

F. Grantee shall defend, indemnify and hold Grantor, its officers, officials, members, employees or volunteers harmless from any and all claims, injuries, damages, losses or lawsuits, including attorney's fees, legal expenses and litigation costs, arising from injury or death to persons or property, including claims, injuries, sickness, disease or death or damage to property, caused by or resulting from the negligent acts, errors, or omissions of Grantee or its agents, employees, officers, or officials in performance of this Conservation Easement, except for injuries and damages caused by the sole negligence of Grantor.

Grantor shall defend, indemnify and hold Grantee, its officers, officials, employees or volunteers harmless from any and all claims, injuries, damages, losses, or lawsuits, including attorney's fees, legal expenses and litigation costs, arising from injury or death to persons or property, including claims, injuries, sickness, disease or death, or damage to property, caused by or resulting from the negligent acts, errors, or omissions of Grantor or its agents, employees, members, officers, or officials with respect to the Conservation Property, except for injuries and damages caused by the sole negligence of Grantee.

Should a court of competent jurisdiction determine that this agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantor and the Grantee, or their respective officers, officials, members, employees, or volunteers, the indemnitor's liability, including the duty and cost to defend hereunder, shall be only to the extent of the indemnitor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantor's and Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Grantor and Grantee.

VIII. Succession, Covenants, Amendments, and Subsequent Transfers

A. It is the express intent of the Grantor and Grantee that the provisions of this Conservation Easement shall run with and burden title to the Conservation Property in

perpetuity and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

B. The Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which any interest in any or a portion of the Conservation Property is transferred.

C. Grantor and Grantee recognize that rare and extraordinary circumstances that could arise which warrant modification of certain provisions of the Conservation Easement. To this end, Grantor and Grantee have the right to agree to amend this Conservation Easement without prior notice to any other person or entity, subject to the following terms and conditions:

1. Grantee and Grantor must mutually agree the amendment enhances or does not materially detract from the purposes of the Conservation Easement;
2. No amendment shall affect the Conservation Easement's perpetual duration; and
3. Any such amendment shall be in writing, signed by both the Grantor and Grantee, and recorded with the Auditor in Thurston County, Washington.

IN WITNESS WHEREOF, the authorized representative of each party has duly executed this Conservation Easement as of the date stated below.

CITY OF OLYMPIA

**OLYMPIA COALITION FOR
ECOSYSTEMS PRESERVATION**

By: _____
Steven R. Hall
Title: City Manager

By: _____
Daniel Einstein, PhD
Title: President

Date: _____

Date: _____

Approved as to Form

By: Mark Barber
Title: City Attorney

Exhibit A
Legal Description of Property Subject to Easement

(Thurston Assessor's Parcel Nos. 67400003600 and 09030002001)

Parcel No. 6740-00-03600

Lots 36, 37 and 38 of Parker and Hays Plat, as recorded in Volume 1 of Plats, page 16.

SUBJECT TO EXCEPTIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS AND AGREEMENTS OF RECORD.

Situate in County of Thurston, State of Washington.

Parcel No. 0903-00-02001

That part of Austin Donation Claim No. 49, Section 10, Township 18 North, Range 2 West, W.M., described as follows:

Beginning at a point on the North line of said Austin Claim, 500 feet West of the intersection of the Westerly line of West Bay Drive therewith; running thence West along said North line of claim 500 feet, more or less, to a point 150 feet East of East line of North Rogers Street; thence Southerly parallel with said street 200 feet, more or less; thence East 500 feet, more or less, and North 200 feet to the point of beginning: EXCEPTING the West 100 feet thereof.

SUBJECT TO EXCEPTIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS AND AGREEMENTS OF RECORD.

Situate in County of Thurston, State of Washington.

EXHIBIT B
Site Map

