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BOOK 214 PAGE 229

FILED FOR RECORD
SKAMANIA CO. WASH.
BY CLARK COUNTY TITLE

When recorded return to:

Heather Tischbein, Board Chair
Cold Spring Conservancy
33420 NE 171st Court
Yacolt, Washington 98675

Glenn Lamb, Executive Director
Columbia Land Trust
1351 Officers' Row
Vancouver, Washington 98661

REAL ESTATE EXCISE TAX

21943

AUG 30 2001

PAID

1600⁰⁰

Copied deposit

SKAMANIA COUNTY TREASURER

AUG 30 3 53 PM '01

G. Lowry
AUDITOR
GARY H. OLSON

GRANT DEED OF CONSERVATION EASEMENT

Grantor: Cold Spring Conservancy, Inc., Washington nonprofit corporation

Grantee: Columbia Land Trust, Washington nonprofit corporation

Legal Descriptions for Spring Canyon and Chenoweth School parcels:

Abbreviated form:

#1000 Section 24, Township 3 Range 9

#1001 Section 24, Township 3 Range 9

Assessor's Tax Parcel Number:

03-09-24-1000

03-09-24-1001

210
8-30-01

Filed
Recorded
Returned
Noted

LEGAL DESCRIPTION ATTACHED ON PAGE 26

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this 26th day of July, 2001, by Cold Spring Conservancy, a Washington nonprofit corporation having an address at 1652 Chenoweth Road, Underwood, Washington 98651 ("Grantor"), in favor of Columbia Land Trust, a Washington nonprofit corporation, having an address at 1351 Officers' Row, Vancouver, Washington 98661 ("Grantee").

I. RECITALS

A. Grantor is the sole owner in fee simple of that certain real property (the "Protected Property") in Skamania County, Washington, more particularly described in Exhibit A (legal description), which is attached and incorporated into this Easement by this reference.

B. The Protected Property possesses open space, natural, forest, habitat, scenic, research, educational, and recreational values (collectively, "Conservation Values") of great importance to Grantor, Grantee, the people of Skamania County and the people of the State of Washington.

C. The Protected Property is currently classified as "Timber Land" for county tax assessment purposes. The legislatively declared policies of the State of Washington in the Timber Land Taxation Act, Chapter 84.33 RCW, is the land "is primarily devoted to and used for growing and harvesting timber but whose value for other purposes may be greater than its value for use as forest land."

D. The Protected Property consists of two parcels, Spring Canyon and Chenoweth School, totaling 40 acres of land located on the Chenoweth Bench in the Little White Salmon River watershed. The land is located near the community of Underwood in Skamania County, twelve miles east of Stevenson, Washington, which is the county seat. The terrain is effectively level near the northwest corner and slopes up steeply in a southeasterly direction where the Protected Property becomes generally level near the southeast corner. The Protected Property is zoned large-scale agriculture and is vacant land with no structures. (AG-1, 60-acre minimum).

E. The Protected Property is in the same watershed as the Little White Salmon National Fish Hatchery and Willard National Fish Hatchery, which were established to enhance fish runs for the Columbia River Basin. Restrictions on uses of the Protected Property would enhance the resources and are consistent with the values of the National Fish Hatcheries because

the Protected Property will help connect upland areas with the lands surrounding these National Fish Hatcheries.

F. The Protected Property is in the General Management Area of the Columbia River Gorge National Scenic Area ("National Scenic Area"), established to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge ("Gorge"). 16 U.S.C. § 544 et seq. The Property provides scenic views to the northwest and is subject to developmental pressures due in large part to the increasing popularity of windsurfing and increased tourism in the Gorge. Restrictions on uses of the Protected Property would benefit the National Scenic Area by establishing a connection between the Protected Property and the National Scenic Area focusing on the public benefit and a defined governmental plan for gorge protection of natural and scenic resources in the Gorge.

G. The Protected Property provides critical habitat for the spotted owl, peregrine falcon, and Water Howellia, all classified as endangered and protected under the Endangered Species Act. 16 U.S.C. § 1531 et. seq. Congress has found that encouraging public and private conservation programs "is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage of fish, wildlife, and plants." 16 U.S.C. § 1531(a)(5). One of the purposes of the Endangered Species Act is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." 16 U.S.C. § 1531(b). Restrictions on uses of the Protected Property would benefit these endangered species because of the relative absence of federal land ownership in the area and protection of this property could prevent further development and improve dispersal habitat for spotted owl and other species. In addition, this habitat is situated in a key location that will significantly enhance opportunities for birds to move across the Columbia River Gorge.

H. The Protected Property also provides habitat for the bald eagle, which was recently removed from endangered status, and the spotted frog, a species proposed for listing under the Endangered Species Act, which provides "a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." 16 U.S.C. § 1531(b).

I. The Protected Property is in proximity to public and private schools in the Portland, Oregon -Vancouver, Washington metropolitan area; Stevenson-Carson, Washington; White Salmon, Washington; Trout Lake, Washington; and Hood River, Oregon school districts, as well as all institutions of higher learning in this same area. Its availability for educational and research programs will provide for the enhancement of the public's appreciation and understanding of sustainable resource management, ecological education, and watershed education and the importance of protecting, enhancing, and restoring the biodiversity of ecosystems.

J. The specific Conservation Values of the Protected Property are further documented in an inventory of relevant features of the Protected Property, dated March 31, 2001, on file at the offices of Grantee and incorporated into this Easement by this reference ("Baseline Assessment"). The Baseline Assessment consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement.

K. The Protected Property consists of two of seven parcels, totaling 204 acres, being placed in permanent protection and trust as part of the Little White Salmon Biodiversity Reserve. The Biodiversity Reserve is being established by the Cold Spring Conservancy to provide essential connecting habitat for the spotted owl and other isolated populations of endangered species. The Biodiversity Reserve will provide learning and living laboratory for ecological education for scientists, artists, business leaders, students, and the general public to learn about sustainable watershed and resource management within the Columbia River Gorge.

L. Grantor intends that the Conservation Values of the Protected Property be preserved and maintained by permitting the continuation of only those land uses on the Protected Property that do not significantly impair or interfere with the Conservation Values. Such uses existing at the time of this grant include, without limitation, research and education programs, recreational uses for trails, and sustainable forest management uses consistent with this Easement.

M. Grantor, as owner of the Protected Property, has the right to identify, protect, and preserve the Conservation Values of the Protected Property, and desires to transfer such rights to Grantee in perpetuity.

N. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and 84.34.250, whose primary purpose is to acquire interests in real property in the Columbia River Region, for (i) open space; (ii) protection of farm, forestlands, wetlands, vistas, and other natural areas; (iii) recreation; (iv) conservation and restoration of fish and wildlife habitat; (v) protection of water quality and water quantity and; (vi) conservation signature landscapes.

O. Grantee agrees by accepting this Easement to honor the intentions of Grantor as stated in herein and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and generations to come.

II. CONVEYANCE AND CONSIDERATION

A. For the reasons stated above, in consideration of one-hundred twenty-five thousand dollars (\$125,000) the mutual covenants, terms, conditions, and restrictions contained in this instrument, Grantor hereby voluntarily grants, conveys and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as defined below, subject only to the restrictions contained in this instrument.

B. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

C. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

III. PURPOSE

The Purpose of this Easement is to assure that the Protected Property will be retained forever predominantly in its natural, open space condition "where such preservation is (I) for the scenic enjoyment of the general public and (II) pursuant to a clearly delineated Federal, State or local governmental conservation policy, and will yield a significant public benefits," and forested condition as the "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," (as those phrases are used in 26 U.S.C. § 170(h)(4)(A)(ii) and (iii), as amended and in regulations promulgated under this law). The purpose is also to prevent any use of, or activity on, the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property (the "Purpose"). Grantor intends that this Easement will confine the use of, or activity on, the Protected Property to such uses and activities that are consistent with this Purpose. Except as specifically provided for in Section XI, this Easement shall not be construed as affording to the general public physical access to the Protected Property.

IV. RIGHTS CONVEYED TO GRANTEE

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

A. **Identification and Protection.** To identify, preserve and protect in perpetuity and to enhance by mutual agreement the Conservation Values of the Protected Property.

B. Access.

1. To enter the Protected Property semi-annually at a mutually agreeable time and with prior written notice to the Grantor, for the purpose of making a general inspection to monitor compliance with this Easement and to undertake stewardship activities.

2. To enter the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring or has occurred for the purposes of enforcing the provisions of this Easement.

C. Scientific/Educational Use. To allow persons or groups to enter the Protected Property for educational, scientific and biological purposes to observe and study on the Protected Property; provided that any such person or groups are first approved by Grantor, make prior arrangements with Grantor, agree to provide Grantor with copies of any data or reports resulting from such research, and agree to abide by any restrictions on access set forth by Grantor. All persons or groups given permission to enter the Protected Property shall sign an "Agreement to Release from Liability", substantially in the form attached to this Easement as Exhibit B. This waiver is intended to release Grantor and Grantee from all liability to the extent allowed by law.

D. Restoration and Stewardship. Upon mutual consent of Grantor and Grantee, Grantor and Grantee may conduct jointly, or Grantee may conduct separately, restoration and stewardship activities on the Protected Property to further the Purpose of this Easement.

E. Injunction and Restoration. To enjoin any use of, or activity on, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by members of the public, and to require or undertake at the Grantee's discretion the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section X.

F. Enforcement. To enforce the terms of this Easement, consistent with Section X.

G. Assignment. To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XV.

**V. USES AND ACTIVITIES CONSISTENT WITH
THE PURPOSE OF THE EASEMENT**

A. General. Grantor reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Protected Property, including

the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the Easement and that is not prohibited by this Easement. Without limiting the generality of this subsection, Grantor specifically reserves for itself and its personal representatives, heirs, successors, and assigns, the following uses and activities:

B. **Forest Management.** Grantor may manage the existing trees and forest within the Protected Property for the purpose of creating and enhancing wildlife habitat, and to do so generally by creating and maintaining late successional stage forestlands. The Forest Management Activities are subject to the following limitations:

1. Forest management activities shall be carried out in compliance with federal, state and local regulations, and a relevant forest management plans as required by Skamania County.
2. Forest management activities shall not substantially and adversely impact the integrity of the watershed, water quality and quantity, and the Conservation Values of the Protected Property.
3. Timber harvesting shall be conducted in the sustained yield manner.
4. Roads may be constructed for the purpose of removing timber from the Property, in such a manner as to minimize the adverse effect upon the Conservation Values of the Protected Property. The building of permanent roads shall be considered as a secondary option to non-intrusive and less damaging logging operation systems, i.e. drag line and helicopter removal.
5. No clear-cut harvest methods may be used on the Protected Property.
6. Forest chemicals may be used on the Protected Property only in the amounts and with the frequency constituting the minimum necessary to accomplish reasonable forest management objectives. The use of such chemicals shall be conducted in such a manner as to minimize the adverse effect upon the Conservation Values of the Protected Property and to minimize any impairment of the natural ecosystem.
7. Prior to any timber harvest, Grantor shall obtain Grantee's prior approval for all Forest Management Activities and shall submit to Grantee for review and approval a plan that addresses the objectives of such activities, potential impacts of such activities on the Conservation Values of the Protected Property, and include proposed mitigating measures.

C. **Recreation.** The undertaking of, or allowing others to undertake, passive recreational activities such as hiking, bird-watching, and cross-country skiing on the Protected Property; provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Protected Property. No motorized or mechanized recreational vehicles or activities that could adversely impact the Conservation Values of the Protected Property are allowed.

D. **Road Maintenance.** The maintenance, renovation, expansion, or replacement of all roads existing and identified in the Baseline Assessment that are necessary to further or maintain the Conservation Values of the Protected Property. The design and location of any renovation, expansion, or replacement shall be subject to the prior written approval of Grantee, and maintenance of the roads shall not adversely impact the Conservation Values of the Protected Property.

E. **Trail Construction.** The use, construction, and maintenance of trails, provided that Grantor shall provide Grantee with notice of any trail construction 30 days prior to such construction.

F. **Education and Research.** The undertaking of educational and research activities of an ecological or conservation nature, provided that any such activity that shall not adversely impact the Conservation Values of the Protected Property.

G. **Maintenance of Existing Ditching.** The maintenance of existing ditching to protect existing or permitted roads and trails and permitted uses and activities.

H. **Signs.** The placement of signs on the Protected Property to state the conditions of access to the Protected Property; provided that such signs are located to preserve, as much as possible, the undisturbed Conservation Values of the Protected Property. Signs in excess of fifteen (15) square feet in area need prior written approval by Grantee of sign location and design. Neon, digital or electronic signs shall not be allowed on the Protected Property.

I. **Protection of Public Health or Safety.** The undertaking of other activities necessary to protect public health or safety or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible.

J. **Structures.** To use, construct, and maintain shelters for permitted uses, provided that the construction of such shelters be subject to prior written approval of Grantee.

K. **Harvesting of Native Plants.** The gathering and picking of mushrooms and other edible, medicinal and landscaping plants, provided that such activity shall be conducted so that interference with Conservation Values of the Protected Property is avoided.

L. **Stewardship Activities.** The undertaking of any activity performed pursuant to the Stewardship Plan covering the Protected Property, which is agreed to by Grantor and Grantee. Activities may include, but are not limited to, invasive vegetation control, plantings, debris removal, and reforestation.

M. **Water Resources.** The development of water resources from existing springs on the Protected Property; provided that such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided. The design and location for any renovation, expansion or replacement shall be subject to the prior written approval of Grantee.

VI. USES AND ACTIVITIES INCONSISTENT WITH THE PURPOSE OF THE EASEMENT

A. **General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited; except as expressly provided for in Section V:

B. **Subdivision.** The legal or "de facto" division, subdivision, platting, partitioning, or planned unit development, or other process by which the Protected Property is divided into lots. It is the express intent of Grantor to convey by this Easement all the development rights to the Protected Property. The parties agree that such rights are terminated and extinguished, and the Protected Property may not be used for the purpose of calculating permissible lot yield for any property.

C. **Utilities.** The installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities.

D. **Alteration of Land.** The alteration of the surface of the land, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod; except as deemed necessary by both the Grantor and Grantee to preserve or protect the Conservation Values of the Protected Property.

E. **Alteration of Water Courses.** The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses; except as deemed necessary by both the Grantor and Grantee to preserve, protect or enhance the Conservation Values of the Protected Property.

F. **Erosion or Water Pollution.** Any use or activity that causes or is likely to cause material soil degradation or erosion or material pollution of any surface or subsurface waters.

G. **Feedlots.** The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.

H. **Agricultural Activities.** The conducting of grazing or agricultural activities of any kind.

I. **Waste Disposal.** The disposal or storage or Release of Hazardous Substances (as defined in this section), rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property. The term "Release" shall mean the release, generation, treatment, disposal, storage, dumping, burying, or abandonment on the Protected Property. The term "Hazardous Substances" shall mean any substances, materials, or wastes which are hazardous, toxic, dangerous, harmful or are designated as, or contain components which are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product.

J. **Signs.** The placement of commercial signs, billboards, or other advertising material on the Protected Property.

K. **Hunting.** Hunting or trapping; except to the extent determined necessary by Grantee to preserve, protect or enhance the Conservation Values of the Protected Property. Feral domestic mammals and individuals from the family Muridae of the order Rodentia (old world rats and mice) may be killed if done in a manner so as not to adversely impact native plants and animals.

L. **Mining.** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.

M. **Wildlife Disruption.** The disruption of wildlife breeding, foraging, and nesting activities, including, but not limited to, allowing the free range of dogs not under voice command. Forestry Management Activities shall not be considered a disruption of such activities, provided, that any Forest Management Activities, as defined in Section V, are conducted in accordance with the provisions of Section V. (B)

N. **Herbicides or Pesticides.** The use of any herbicides or pesticides; except as deemed necessary by Grantor and Grantee to preserve, protect or enhance the Conservation Values of the Protected Property and as is consistent with Section V, (B)(7).

O. **Introduced Vegetation.** The planting or introduction of nonnative wetland plants and nonnative invasive species on the Protected Property.

P. **Off-Road Vehicles.** The operation of motorcycles, dune buggies, snowmobiles, or any other type of off-road motorized vehicles.

VII. AFFIRMATIVE OBLIGATIONS AND COMMITMENTS

A. **Invasive Non-Native Species.** Grantor and Grantee commit to work together over the coming years to explore and implement reasonable methods of controlling or eradicating invasive non-native species on the Protected Property, as part of the Little White Salmon Biodiversity Reserve.

B. **Native Species.** Grantor and Grantee commit to work together over the coming years to encourage the establishment of appropriate native species on the Protected Property, as part of the Little White Salmon Biodiversity Reserve.

C. **Stewardship Plan.** Grantee shall develop a plan for stewardship of the Protected Property ("Stewardship Plan"). This plan shall be subject to Grantor's approval, which shall not be unreasonably withheld or delayed. The Stewardship Plan shall describe the activities that Grantor and Grantee mutually agree are necessary to preserve, protect, and enhance the Conservation Values of the Protected Property.

VIII. NOTICE AND APPROVAL

A. Notice.

1. Grantor. Several provisions of this Easement require Grantor to notify Grantee and to receive Grantee's written approval prior to undertaking certain permitted uses and activities within the Protected Property. The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Easement. Whenever such notice is required, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement.

2. Grantee. Several provisions of this Easement require Grantor to give notice to Grantee prior to undertaking certain activities within the Protected Property. Whenever such notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantee intends to undertake the use or activity in question, unless otherwise provided for by this Easement.

B. Approval. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the use or activity as proposed would be inconsistent with the Purpose of this Easement. Grantee's approval may include reasonable conditions that must be satisfied in undertaking the proposed use or activity.

C. Addresses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Heather Tischbein, Board Chair
Cold Spring Conservancy
33420 NE 171st Court
Yacolt, Washington 98675

To Grantee: Glenn Lamb, Executive Director
Columbia Land Trust
1351 Officers' Row
Vancouver, Washington 98661

Or to such other address as either party designates by written notice to the other.

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7/26/2001

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IX. DISPUTE RESOLUTION

If a dispute arises between the parties concerning the consistency of any present or proposed use or activity with the Purpose of this Easement, the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, either party may refer the dispute to mediation by request made in writing to the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single mediator to hear the matter. The matter shall be settled in accordance with any Washington State mediation. Each party shall bear its own costs, including attorney's fees, if mediation is pursued under this Section. The parties shall share equally the fees and expenses of the mediator. The parties agree not to proceed with the use or activity pending resolution of the dispute.

X. GRANTEE'S REMEDIES

A. **Notice of Violation, Corrective Action.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

B. **Grantor's Failure to Respond.** Grantee may bring an action as provided in subsection C if Grantor:

- a. Fails to cure the violation within sixty (60) days after receipt of a notice of violation from Grantee; or
- b. Under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to begin curing the violation within the sixty (60) day period and fails to continue diligently to cure such violation until finally cured.

C. **Grantee's Action.**

a. **Injunctive Relief.** Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

- i. To enjoin the violation, ex parte as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction; and

- ii. To require the restoration of the Protected Property to the condition that existed prior to any such injury.

b. **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of conservation values. Without limiting Grantor's liability in any way, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.

D. **Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property Grantee may pursue its remedies under this Section X without prior notice to Grantor or without waiting for the period provided for cure to expire.

E. **Scope of Relief.** Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor stipulates that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

E. **Costs of Enforcement.**

a. For any Grantor that is the above-named Grantor, a public agency, or a non-profit nature conservancy corporation, the following shall apply. In the event the Grantor or Grantee finds it necessary to bring an action at law or other proceeding against the other party to enforce or interpret any of the terms, covenants, or conditions of this Easement, the prevailing party in any such action or proceedings shall be paid all costs and reasonable attorneys' fees and consultants' fees by the other party and all such costs and attorneys' and consultants' fees shall be included in any judgement secured by such prevailing party.

b. For any Grantor that is not described in Section X (F)(1) above, the following shall apply. In the event Grantee must enforce the terms of this Easement, the costs of

restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity. If Grantor ultimately prevails in any judicial proceeding initiated by Grantee to enforce the terms of this Easement, each party shall bear its own costs.

F. **Grantee's Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

G. **Waiver of Certain Defenses.** Grantor acknowledges that it has carefully reviewed this Easement and has been advised by the Grantee to seek qualified legal counsel to advise the Grantor of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon adverse possession or prescription relating to this Protected Property or this Easement.

H. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, and not precipitated or aggravated by Grantor's prior actions, including, without limitation, natural changes, fire, flood, storm, or earth movement, or from acts of trespassers that Grantor could not reasonably have anticipated or prevented, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.

I. **Compliance Certificates.** Grantee will execute, acknowledge and deliver to Grantor, or any party designated by Grantor, a written certificate of compliance in a form suitable for recording, stating whether and with what exceptions or limitations the Protected Property, or any pertinent portion thereof, complies with this Easement, after an inspection, which Grantee will conduct within sixty (60) days of Grantor's written request.

XI. ACCESS BY PUBLIC

No right of access by the general public to any portion of the Protected Property is conveyed by this Easement.

XII. COSTS, LIABILITIES AND INSURANCE, TAXES, ENVIRONMENTAL COMPLIANCE, AND INDEMNIFICATION

A. **Costs, Legal Requirements, Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Such insurance shall include Grantee's interest, name Grantee as an additional insured, and provide for at least thirty (30) days notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. Grantor and Grantee release and relieve the other, and waive their entire right to recovery for loss or damage to the extent that the loss or damage is covered by the injured party's insurance. This waiver applies whether or not the loss is due to the negligent acts or omissions of Grantor or Grantee. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor, and shall have any liens removed from the title within a reasonable amount of time.

B. **Casualty Loss Insurance Coverage.** Grantor shall maintain casualty loss insurance adequate to restore the Protected Property to its preexisting condition in the event of a casualty loss, and shall furnish Grantee with satisfactory evidence of such insurance coverage upon request. Regardless of whether adequate insurance to effect such restoration has been maintained, the decision to effect restoration of the Protected Property will be determined according to Section XIII. In the event that (1) restoration does not occur, (2) insurance proceeds exceed the cost of restoration, or (3) the Easement is extinguished on account of the impossibility

of restoring the Conservation Values of the Protected Property, the division of insurance proceeds shall be determined in accordance with Section XIII.

G. **Restoration in the Event of Casualty Loss.** If circumstances arise under which the Protected Property incurs a casualty loss (as defined by Section 165(c)(3) of the Internal Revenue Code of 1986, as amended), all casualty loss proceeds, whether from insurance, tax benefits, or some other source, resulting from such loss and attributable to destruction of the Conservation Values of the Protected Property shall be applied to restore those Conservation Values of the Protected Property to their condition immediately preceding the casualty. If, in the reasonable judgment of Grantee, the Protected Property's post-casualty value and economic utility are diminished to an extent that renders such use of the proceeds towards restoration futile or economically impractical, Grantee shall have the option to terminate or extinguish the Easement in accordance with Section XIII. Exercise by Grantee of this option shall not be determined to be a relinquishment of any claim to the casualty loss proceeds that would have gone towards restoration of the Protected Property if Grantee had not exercised such option.

D. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.

E. **Representations and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:

1. There are no apparent or latent defects in or on the Protected Property;
2. Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;
3. There has been no release, dumping, burying, abandonment or migration from off-site ("release") on the Protected Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as,

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hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;

4. Grantor has not disposed of any hazardous substances off-site, nor has Grantor disposed of substances at sites designated or proposed to be designated as federal Superfund (42 U.S.C. § 9601 et seq.) or state Model Toxics Control Act (RCW 70.105D.010 et seq.) ("MTCA") sites; and
5. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values or any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantor by government agencies or third parties arising out of alleged violations of environmental laws, and Grantor has not received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

F. **Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the Release was caused by Grantee, in which case Grantee shall be responsible for remediation.

G. **Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), and MTCA.

H. **Grantor's Indemnification.** Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses,

damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property that is not a consequence of any activity of any of the Indemnified Parties.
2. Violations or alleged violations of, or other failure to comply with, any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, including, without limitation, CERCLA and MTCA, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Protected Property, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified Parties.
3. The presence or release in, on, from, or about the Protected Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement of hazardous, toxic or dangerous to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless due to the acts of omissions of the Indemnified Parties;
4. The obligations, covenants, representations and warranties specified in subsections A, B, C, D, and E of this section.

I. Grantee's Indemnification. Grantee agrees to release and hold harmless, indemnify, and defend Grantor and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property that is a consequence of Grantee's actions or actions of Grantee's members, directors, officers, employees, agents, or contractors.

XIII. EXTINGUISHMENT, CONDEMNATION AND SUBSEQUENT TRANSFER

A. **Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section XIII (B) of this Easement.

B. **Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of Section XIII (A) of this Easement, the parties stipulate to have a ratio of the value of the Easement to the value of the Protected Property unencumbered by the Easement of thirty-seven percent (37%), which shall remain constant.

C. **Condemnation.** If all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Except as provided by applicable law, Grantor and Grantee agree that Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in subsection XIII (B) above.

D. **Application of Proceeds.** Grantee shall use any proceeds received under the circumstances described in this Article XIII in a manner consistent with its conservation purposes, which are exemplified by the grant.

E. **Subsequent Transfers.** Grantor agrees to:

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

2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property;

3. Give written notice to Grantee of the transfer of any interest in all or a portion of the Protected Property no later than sixty (60) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

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

XIV. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may agree to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable). Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, and shall be recorded in the official records of Skamania County, Washington, and any other jurisdiction in which such recording is required.

XV. ASSIGNMENT AND SUCCESSION

A. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated hereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision(s) then applicable). As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall give written notice to Grantor of the intended transfer of the Easement no later than sixty (60) days prior to the date of such transfer. Such notice to Grantor shall include the name, address, and telephone number of the prospective transferee or of the prospective transferee's representative. Such transfer shall be subject to the written approval of Grantor, which shall not be unreasonably withheld. Grantor may take into consideration the legal, technical and financial ability of the prospective transferee to fulfill Grantee's obligations under this Easement and transferee's ability to support land conservation, sustainable resource management, ecological education and research, and partnerships with public and private organizations(UU1).

B. **Succession.** If at any time it becomes impossible for Grantee to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement and Grantee has not named a successor organization, or Grantee ceases to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable) or to be authorized to acquire and hold conservation easements under RCW 64.04.130 and 84.34.250 (or any successor provision(s) then applicable), then Grantee's rights and obligations under this Easement shall become vested and fall upon such other entity, with purposes similar to Columbia Land Trust, constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable); provided that if such vesting is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Washington law and the Internal Revenue Code and with due regard to the Terms and Purpose of this Easement.

XVI. RECORDATION

Grantee shall record this instrument in a timely fashion in the official records of Skamania County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

XVII. GENERAL PROVISIONS

A. **Effective Date.** The effective date of this Easement shall be the date on which the Grantor executed this Easement.

B. **Controlling Law.** The laws of the State of Washington shall govern the interpretation and performance of this Easement.

C. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

D. **Severability.** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the

application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

E. Entire Agreement. This instrument, including all exhibits and attachments hereto, sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIV.

F. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.

G. "Grantor" - "Grantee". The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and successors and assigns, and the above-named Grantee, and its successors and assigns.

H. Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

I. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

J. 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.

K. Authority. The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

L. Captions. The captions in this instrument have been inserted solely for convenience and ease of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

XIX. SCHEDULE OF EXHIBITS

- A. Legal Descriptions of Property subject to Easement.
- B. Site Map

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this
day of August 2001.

Dated: July 26, 2001

By Cold Spring Conservancy, Grantor

Heather Tischbein
Heather Tischbein, Board Chair

STATE OF WASHINGTON)
COUNTY OF CLARK)ss

I certify that I know or have satisfactory evidence that Heather Tischbein is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Board Chair of Cold Spring Conservancy to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 26, 2001

CHRISTINE LOUISE EGAN
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
JANUARY 18, 2005

Christine Louise Egan
Notary Public
Print Name Christine Louise Egan
My commission expires Jan. 18, 2005
Residing at Vancouver, Washington

(Use this space for notary stamp/seal)

\\Sinks\lan\columbia Land Trust\CONSERVATION\gorge\coldspring\Acquisition documents\Spring Canyon Easement\Spring Canyon easement Final 7-26-01.doc
7/26/2001

BOOK 214 PAGE 253

The Columbia Land Trust does hereby accept the above Grant Deed of Conservation Easement.

Dated: 8/22/2001

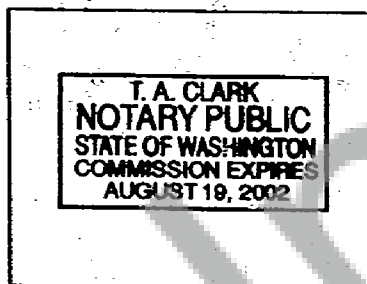
By Columbia Land Trust, Grantee

D Lamb
Glenn Lamb, Executive Director

STATE OF WASHINGTON)
COUNTY OF CLARK) ss.

I certify that I know or have satisfactory evidence that Glenn Lamb is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of Columbia Land Trust to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 8/22/01



(Use this space for notary stamp/seal)

T.A. Clark
Notary Public
Print Name T.A. CLARK
My commission expires 8/19/02
Residing at Vancouver

EXHIBIT A

Legal Description for Spring Canyon

The Southeast quarter of the Southwest quarter of Section 24, Township 3 North, Range 9 East of the Willamette Meridian, Skamania County, Washington.

EXCEPTING THEREFROM the following described parcel of land conveyed by Quit Claim Deed to Thurlo Harris, Orville Harris and Harley Harris on the 11th day of June, 1971, to-wit:

BEGINNING at the Northwest corner of the Southeast quarter of the Southwest quarter of Section 24, Township 3 North, Range 9 East of the Willamette Meridian, Skamania County, Washington; thence East along said North line of the said Southeast quarter of said Southwest quarter, 208 feet; thence South 208 feet; thence West 208 feet; thence North along the West line of the said Southeast quarter of the said Southwest quarter to the Point of Beginning.

Gary H. Martin, Skamania County Assessor

Date 8-30-01 Parcel # 030924 00 1000 00
110 030924 00 1001 00

Legal Description of Chenoweth School Parcel

A portion of the Southeast quarter of the Southwest quarter of Section 24, Township 3 North, Range 9 East of the Willamette Meridian, Skamania County, Washington, described as follows:

BEGINNING at the Northwest corner of the Southeast quarter of the Southwest quarter of Section 24, Township 3 North, Range 9 East of the Willamette Meridian, Skamania County, Washington; thence East along said North line of said Southeast quarter of said Southwest quarter 208 feet; thence South 208 feet; thence West 208 feet; thence North along the West line of the said Southeast quarter of the said Southwest quarter to the Point of Beginning.

EXHIBIT B

Site Map for the Protected Properties and General Vicinity



RECORDER'S NOTE: COLORED TOPO MAP
MAY BE ILLEGIBLE ON FILM.