

**From:** [sara@krdistrict.org](mailto:sara@krdistrict.org)  
**To:** "Tyler Grover"; "Nelson, Jennifer L (DFW)"; Jeremiah Cromie  
**Subject:** RE: Bellanca Homes - Land Study Inquiry  
**Date:** Tuesday, March 15, 2022 11:20:46 AM  
**Attachments:** [20220315101113.pdf](#)

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**CAUTION:** This email originated from outside the Kittitas County network. Do not click links, open attachments, fulfill requests, or follow guidance unless you recognize the sender and have verified the content is safe.

Hi Tyler,

I sincerely apologize for not responding to your email sooner. This particular email string has been living in my junk email box for some reason, but I am glad that I saw it now!

I do have an easement declaration by Green Canyon Properties, recorded July of 2021, and it states that no structure or improvements of any kind may be constructed on the surface of Drainage Ditch B. Which is the Drainage ditch across portions of lots 2, 3, 12, 13, and 14. See attached document for more details. I am attempting to locate a better copy of the map showing the specific drainage ditches and irrigation plans for you.

Thanks,

Sara Vickers  
Lands Clerk/RRA Specialist  
Kittitas Reclamation District  
509-925-6158  
[www.kittitasreclamationdistrict.org](http://www.kittitasreclamationdistrict.org)

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**From:** Tyler Grover <[tyler@bellancahomes.com](mailto:tyler@bellancahomes.com)>  
**Sent:** Monday, March 14, 2022 2:36 PM  
**To:** Nelson, Jennifer L (DFW) <[Jennifer.Nelson@dfw.wa.gov](mailto:Jennifer.Nelson@dfw.wa.gov)>; Jeremiah Cromie <[jeremiah.cromie@co.kittitas.wa.us](mailto:jeremiah.cromie@co.kittitas.wa.us)>; [sara@krdistrict.org](mailto:sara@krdistrict.org)  
**Subject:** Re: Bellanca Homes - Land Study Inquiry

Hi Jennifer, we are looking at moving forward on building on lots 2 and 3 out here. The parcels are 282936 and 122936.

When I did my site evaluations that ditch was noted but we were not sure how to address it so I am hoping we can come to some resolution on it. We would like to bury it if it's not servicing anything which it does not appear to be. Let me know what we can do.

If not we could reroute it I am just not sure how exactly to do that.

Thank you

Tyler Grover  
**Bellanca Homes**  
Washington Office: 425-988-4322  
Idaho Office: 208-273-5510  
Office Hours: Mon-Fri, 8:00-4:00  
Web: [www.bellancahomes.com](http://www.bellancahomes.com)

**Our office has moved! Please send all mail to our new location at 503 N Railroad Ave, Ellensburg WA 98926.**

*\*VENDOR PAY SCHEDULE: All checks received before the 25th, will be paid out on the 10th of the following month.*

On Wed, Mar 2, 2022 at 2:47 PM Nelson, Jennifer L (DFW) <[Jennifer.Nelson@dfw.wa.gov](mailto:Jennifer.Nelson@dfw.wa.gov)> wrote:

Jeremiah and Tyler,

My apologies for not getting back to you sooner. I was hopeful to receive some feedback from colleagues before getting an answer to you, but I haven't heard back and you deserve an answer. Unfortunately, the answer is somewhat inconclusive without being able to walk the entirety of the channel. There was flow present in mid-February, well outside of the irrigation season and most of the valley floor was gone by this time I believe, making it unlikely it was purely snow melt. It is clear to me that this channel has been used to deliver and convey irrigation water and there are several potential sources from KRD laterals that could feed directly into this channel. It also appears that this channel flows directly into Cascade Canal. What is unclear to me is whether or not there may be spring flows or other natural sources for this channel.

Given this uncertainty, my recommendations are to try to place structures as far away from the channel as possible because it does appear to convey flow longer than simply the irrigation season. If structures encroach within 100' from the channel, please plant some native vegetation that will help maintain the channel banks while improving wildlife habitat. I think it's unlikely this is a fish bearing stream, but in some places, it appeared to be at least 3' wide, which meets physical criteria. I think this path forward allows for reasonable use of legally created properties while having minimal impact (and possible improvement) to this channel.

I was truly hoping to provide a more definitive answer for you, but without access to walk the channel across multiple properties, it's just not possible at this

See pg 13.

TREASURER'S USE ONLY	RECORDER'S USE ONLY
	<p>Auditors File Number  <u>202107270004</u></p> <p>Time <u>3:42</u> Date <u>7/27/21</u></p>

**After recording return to:**  
 Susan K. Harrel  
 2581 Hunter Rd  
 Ellensburg, WA 98926

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DOCUMENT TITLE: EASEMENT

DECLARANT: GREEN CANYON PROPERTIES LLC, a Washington limited liability company

LEGAL DESCRIPTION: Parcels 1-20 Book 29 of surveys P 123-125, being a portion of SE¼ Sec. 8, T 18N, R 18 E.W.M., County of Kittitas, State of Washington.

ASSESSOR'S TAX PARCEL NO(S): 236033; 282936; 122936; 302936; 19272; 19273; 19274; 19275; 19276; 19277; 19279; 19280; 19281; 19282; 19283; 19284; 19285; 19286; 19287; 226033

REAL ESTATE EXCISE TAX: Does not apply - no consideration as defined WAC 458-61A-102(2)

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**EASEMENT**

THIS EASEMENT (hereinafter referred to as the "Easement") is made this 26<sup>th</sup> day of July, 2021, by GREEN CANYON PROPERTIES LLC, a Washington limited liability company (hereinafter referred to as the "Declarant").

A. WHEREAS, the Declarant owns fee title to the real property located in Kittitas County, Washington and legally described as follows:

Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, as described and delineated on that certain survey of record recorded under Kittitas County Auditors File No. 200311100033 in Book 29 of surveys page 123 to 125, being a portion of the Southeast quarter of Section 8, Township 18 North, Range 18 East W.M., in the County of Kittitas, State of Washington.

(hereinafter referred to as the "Property" or individually as "Parcel 1," Parcel 2," and so forth); and

B. WHEREAS, Declarant intends to sell Parcels 1 through 18 for residential use and retain Parcels 19 and 20 for agricultural uses and possible future residential development; and

C. WHEREAS, the Declarant desires to create certain easements as set forth herein and to establish the property benefited by the Easements, burdened by the Easements, and establish terms and conditions for the use and maintenance of the Easements.

NOW, THEREFORE, in consideration of the benefits contained and derived hereunder, the Declarant, for and on behalf of itself and its respective successors in interest and assigns, does hereby grant, declare, convey and establish the following easements and further declares that all of the Property shall be held, sold and conveyed together with and subject to the following restrictions, covenants, conditions, reservations, easements, assessments and lien rights, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property.

1. **Easements.** The easements described herein are graphically depicted on Exhibit A attached hereto and incorporated herein by reference. In the event of a discrepancy between Exhibit A and the specific easement legally described in this document, the specific legal description shall control. Exhibit A is for illustrative purposes only and is not intended to be a legal description of the easements.

1.1. **EASEMENT Q.** Easement Q is a non-exclusive easement sixty feet (60') in width as described and/or delineated as Easement Q on that certain survey of record recorded under Kittitas County Auditors File No. 200311100033 in Book 29 of surveys page 123 to 125; records of Kittitas County, Washington.

1.1.1. **Use of Easement Q:** Easement Q shall only be used for the following purposes:

1.1.1.1. Private road for ingress and egress, together with, but not limited to, the right to reconstruct, replace, repair, maintain and use said road; and

1.1.1.2. Underground utilities, including, but not limited to, power, telephone, cable and natural gas, together with, but not limited to, the right to install, replace, repair, maintain and use said utilities; and

1.1.1.3. Underground irrigation pipeline(s), together with, but not limited to, the right to install, replace, repair, maintain and use said pipeline(s).

1.1.2. **Parcels Burdened by Easement Q:** Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 are burdened by Easement Q.

1.1.3. **Parcels Benefited by Easement Q:** Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 are benefited by Easement Q.

1.1.4. **Restrictions on Use of Easement Q:** The use of Easement Q by the Parcels Benefited and Burdened by Easement Q is subject to the following terms, conditions, and restrictions:

1.1.4.1. The area of Easement Q shall not be used for long term parking, storage, staging of construction or any other use that would unreasonably interfere with its intended purpose.

1.1.4.2. Parcels 9 and 18 may not access Lower Green Canyon Road, a Kittitas County public road, directly from Parcels 9 and 18. The owners of Parcels 9 and 18 must use Easement Q to access Lower Green Canyon Road.

1.1.4.3. Each Parcel Benefited by Easement Q may have no more than two (2) access points where vehicles can leave the Parcel in order to access Easement Q. Each Parcel Benefited by Easement Q shall construct its two (2) access points for vehicles to move between the Parcel and the road on Easement Q in such a manner so as to not damage or interfere with the road constructed on Easement Q and shall further construct its two (2) access points for vehicles to move between the Parcel and the road on Easement Q with a culvert installed in each access point so as to not interfere with the proper drainage of the road and road bed.

1.1.4.4. Any fence placed within the Easement Q area by the Owner(s) of a Parcel burdened by Easement Q must be constructed in such a manner so as to not interfere with and/or damage below ground infrastructure improvements within the Easement Q area. In the event any fence is constructed within the Easement Q area by the Owner(s) of a benefited Parcel and said fence or the construction of said fence results in damage to the below ground infrastructure improvements located within the Easement Q area, then the Owner(s) of the Parcel causing said damage shall promptly repair the damage at their own cost and expense. Owner(s) of a Burdened Parcel may be required to, at their own cost and expense, remove the fence if the fence interferes with the future use of Easement Q.

1.1.4.5. No structure or improvements of any kind may be constructed on the surface of Easement Q.

1.1.4.6. Even though Parcels 19 and 20 are benefited by Easement Q, Parcels 19 and 20 may only use Easement Q for the purposes set forth in Section 1.1.1.3 above. Parcels 19 and 20 are not required or obligated to pay for any repair and/or maintenance of the road and utilities on Easement Q. Parcels 19 and 20 are only obligated to pay for the repair and/or maintenance of irrigation pipelines which cross Easement Q and which are specifically designed to serve Parcels 19 and 20, as provided for below in Sections 1.4.5 and 1.5.5.

1.1.5. **Use and Maintenance of Easement Q:** Declarant has installed an asphalt road on Easement Q, which has been assigned the name "Green Canyon Lane" by Kittitas County. Declarant has no future or ongoing obligation to maintain, repair, or improve Green Canyon Lane. All decisions concerning the use, repair, replacement, maintenance, reconstruction, or improvement of the easement improvements, including, but not limited to, the road, utilities, and/or pipelines (hereinafter the "Improvements"), shall be agreed upon by a majority vote of the owners of the Parcels benefited by the Easement or Improvement in question. For purposes of this Agreement, Parcels 1 through 18, inclusive, shall each have one vote. Only Parcels having a beneficial use of the Easement or Improvement in question (hereinafter the "Affected Parcel Owners") shall be entitled to vote on matters related thereto. For purposes of this paragraph, "beneficial use" of a roadway shall be deemed to begin upon commencement of construction of a residence, garage, shop, or other approved outbuilding on the Parcel.

1.1.5.1. In the event the Affected Parcel Owners shall determine by majority vote that an Improvement is in need of repair, replacement, maintenance or reconstruction (hereinafter collectively "Maintenance"), the Affected Parcel Owners shall share equally in the cost of such Maintenance, based upon the number of votes as provided hereinabove. Each vote shall equate to a share in said cost; provided, however, Declarant shall not be assessed any Maintenance Cost under the provisions of this Agreement. When a decision is made to perform Maintenance to an Improvement, the Affected Parcel Owners shall establish an account for said purpose. The account shall be managed by a Parcel Owner or a designated management company, as agreed upon by a majority of votes by the Affected Parcel Owners. Each Affected Parcel Owner shall pay its share of the estimated cost of the work into said account within thirty (30) days of written request. In the event the amount paid into the account is not enough to pay the actual cost of the

approved Maintenance, each Affected Parcel Owner shall pay its share of any shortage into the account. If any Affected Parcel Owner fails to pay its share of the cost of Maintenance when due, the remaining Affected Parcel Owners, individually or collectively, may pay the defaulting Parcel Owner's share and may record a lien against the defaulting Parcel Owner's real property in favor of the Parcel Owner(s) who advanced the payment. Said lien may be enforced pursuant to the law of the State of Washington. The lien does not have to be foreclosed or otherwise enforced within any specific time period.

1.1.5.2. No Parcel Owner(s) may upgrade or perform Maintenance on the Improvements on Easement Q without majority approval by Affected Parcel Owners.

1.1.5.3. In the event any Parcel Owner(s) disturb the surface of any Easement area set forth herein during the installation of utilities, storm water drainage or other improvements for the benefit of their own Parcel(s), or through excessive wear and tear, or for any reason damage the Improvements, the Parcel Owner(s) responsible for such damage shall be responsible for repairing and restoring such damaged Improvement to its prior condition, at that Parcel Owner(s)' sole cost and expense.

1.1.6. Declarant has caused utilities and irrigation systems to be located in Easement Q. Any Parcel Owner who desires to access and use those utilities or irrigation systems shall be responsible for all costs associated with connecting the utilities and irrigation systems in Easement Q to the Parcel Owner's Parcel. Declarant shall have no obligation to pay any costs associated with connecting a Parcel or a structure on a Parcel to the utilities or irrigation systems in Easement Q.

1.2. **UTILITY EASEMENT.** A non-exclusive utility easement seven and one-half feet (7.5') in width along and adjacent to the side and rear lot lines of Parcels 1 through 18 for the purposes set forth below.

1.2.1. **Use of Utility Easement:** The Utility Easement shall only be used for the following purposes:

1.2.1.1. Underground utilities, including, but not limited to, power, telephone, cable and natural gas, together with, but not limited to, the right to install, replace, repair, maintain and use said utilities; and

1.2.1.2. Underground irrigation pipeline(s), together with, but not limited to, the right to install, replace, repair, maintain and use said pipeline(s).

1.2.2. **Parcels Burdened by the Utility Easement:** Parcels 1 through 18 are burdened by the Utility Easement.

1.2.3. **Parcels Benefited by the Utility Easement:** Parcels 1 through 20 are benefited by the Utility Easement.

1.2.4. **Restrictions on Use of the Utility Easement.** The following restrictions govern the use of the Utility Easement:

1.2.4.1. The Utility Easement described herein is for utilities only and no benefited Parcel Owner may use the Utility Easement for any other purpose, including, but not limited to, a trail, path, or other course of travel by foot, horse, bicycle, or wheeled vehicle.

1.2.4.2. Any fence placed within the Utility Easement area by the Owner(s) of a Parcel burdened by the Utility Easement must be constructed in such a manner so as to not interfere with

and/or damage below ground infrastructure improvements within the Utility Easement area. In the event any fence is constructed within the Utility Easement area by the Owner(s) of a benefited Parcel and said fence or the construction of said fence results in damage to the below ground infrastructure improvements located within the Utility Easement area, then the Owner(s) of the Parcel causing said damage shall promptly repair the damage at their own cost and expense. Owner(s) of a Parcel burdened by the Utility Easement may be required to, at their own cost and expense, remove the fence if the fence interferes with the future use of the Utility Easement.

1.2.4.3. No structure or improvements of any kind may be constructed on the surface of the Utility Easement.

1.2.5. **Use and Maintenance of Utility Easement:** All decisions concerning the use, repair, replacement, maintenance or reconstruction of the easement improvements, including, but not limited to the roads, utilities and/or pipelines (hereinafter the "Improvements"), shall be agreed upon by a majority vote of the owners of the Parcels benefited by the Easement or Improvement in question. For purposes of this Agreement, Parcels 1 through 18, inclusive, shall each have one vote. Only Parcels having a beneficial use of the Easement or Improvement in question (hereinafter the "Affected Parcel Owners") shall be entitled to vote on matters related thereto. For purposes of this paragraph, "beneficial use" of a roadway shall be deemed to begin upon commencement of construction of a residence, garage, shop, or other approved outbuilding on the Parcel.

1.2.4.1 In the event the Affected Parcel Owners shall determine by majority vote that an Improvement is in need of repair, replacement, maintenance or reconstruction (hereinafter collectively "Maintenance"), the Affected Parcel Owners shall share equally in the cost of such Maintenance, based upon the number of votes as provided hereinabove. Each vote shall equate to a share in said cost; provided, however, Declarant shall not be assessed any Maintenance Cost under the provisions of this Agreement. When a decision is made to perform Maintenance to an Improvement, the Affected Parcel Owners shall establish an account for said purpose. The account shall be managed by a Parcel Owner or a designated management company, as agreed upon by a majority of votes by the Affected Parcel Owners. Each Affected Parcel Owner shall pay its share of the estimated cost of the work into said account within thirty (30) days of written request. In the event the amount paid into the account is not enough to pay the actual cost of the approved Maintenance, each Affected Parcel Owner shall pay its share of any shortage into the account. If any Affected Parcel Owner fails to pay its share of the cost of Maintenance when due, the remaining Affected Parcel Owners, individually or collectively, may pay the defaulting Parcel Owner's share and may record a lien against the defaulting Parcel Owner's real property in favor of the Parcel Owner(s) who advanced the payment. Said lien may be enforced pursuant to the law of the State of Washington. The lien does not have to be foreclosed or otherwise enforced within any specific time period.

1.2.4.2 No Parcel Owner(s) may upgrade or perform Maintenance on the Improvements within the Utility Easement without majority approval by Affected Parcel Owners.

1.2.4.3 In the event any Parcel Owner(s) disturb the surface of any Easement area set forth herein during the installation of utilities, storm water drainage or other improvements for the benefit of their own Parcel(s), or through excessive wear and tear, or for any reason damage the Improvements, the Parcel Owner(s) responsible for such damage shall be responsible for repairing and restoring such damaged Improvement to its prior condition, at that Parcel Owner(s)' sole cost and expense.

1.3. **WEST IRRIGATION EASEMENT.** The West Irrigation Easement is a non-exclusive easement described as the Westerly thirty feet (30') of Parcels 1 and 10.

1.3.1. **Use of the West Irrigation Easement:** The West irrigation Easement may only be used for underground irrigation pipeline(s), together with, but not limited to, the right to install, replace, repair, maintain and use said pipeline(s).

1.3.2. **Parcels Burdened by the West Irrigation Easement:** Parcels 1 and 10 are burdened by the West Irrigation Easement.

1.3.3. **Parcels Benefited by the West Irrigation Easement:** Parcels 19 and 20 are benefited by the West Irrigation Easement.

1.3.4. **Restrictions on Use of West Irrigation Easement.** The following restrictions govern the use of the West Irrigation Easement:

1.3.4.1. The West Irrigation Easement described herein is for irrigation purposes only and no benefited Parcel Owner may use the West Irrigation Easement for any other purpose, including, but not limited to, a trail, path, or other course of travel by foot, horse, bicycle, or wheeled vehicle.

1.3.4.2. Any fence placed with in the West Irrigation Easement area by the Owner(s) of a Parcel benefited by the West Irrigation Easement must be constructed in such a manner so as to not interfere with and/or damage below ground infrastructure improvements within the West Irrigation Easement area. In the event any fence is constructed within the West Irrigation Easement area by the Owner(s) of a benefited Parcel and said fence or the construction of said fence results in damage to the below ground infrastructure improvements located within the West Irrigation Easement area, then the Owner(s) of the Parcel causing said damage shall promptly repair the damage at their own cost and expense. Owner(s) of a Parcel burdened by the West Irrigation Easement may be required to, at their own cost and expense, remove the fence if the fence interferes with the future use of the West Irrigation Easement.

1.3.4.3. No structure or improvements of any kind may be constructed on the surface of the West Irrigation Easement.

1.3.5. **Use and Maintenance of the West Irrigation Easement:** All decisions concerning the use, maintenance, repair, or replacement of improvements on the West Irrigation Easement shall be made by the owner of Parcels 19 and 20. All of the cost and expense of the use, maintenance, repair, and replacement of the improvements on the West Irrigation Easement shall be paid for by the owner of Parcel 19 and 20.

1.4. **EAST IRRIGATION EASEMENT.** The East Irrigation Easement is a non-exclusive easement described as the Easterly fifteen feet (15') of Parcels 8 and 17 and the Westerly fifteen feet (15') of Parcels 9 and 18.

1.4.1. **Use of the East Irrigation Easement:** The East Irrigation Easement may only be used for underground irrigation pipeline(s), together with, but not limited to, the right to install, replace, repair, maintain and use said pipeline(s).

1.4.2. **Parcels Burdened by the East Irrigation Easement:** Parcels 8, 9, 17, and 18 are burdened by the East Irrigation Easement.

1.4.3. **Parcels Benefited by the East Irrigation Easement:** Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 are benefited by the East Irrigation Easement.

1.4.4. **Restrictions on Use of East Irrigation Easement.** The following restrictions govern the use of the East Irrigation Easement:

1.4.4.1. The East Irrigation Easement described herein is for irrigation purposes only and no benefited Parcel Owner may use the East Irrigation Easement for any other purpose, including, but not limited to, a trail, path, or other course of travel by foot, horse, bicycle, or wheeled vehicle.

1.4.4.2. Any fence placed within the East Irrigation Easement area by the Owner(s) of a Parcel benefited by the East Irrigation Easement must be constructed in such a manner so as to not interfere with and/or damage below ground infrastructure improvements within the East Irrigation Easement area. In the event any fence is constructed within the East Irrigation Easement area by the Owner(s) of a benefited Parcel and said fence or the construction of said fence results in damage to the below ground infrastructure improvements located within the East Irrigation Easement area, then the Owner(s) of the Parcel causing said damage shall promptly repair the damage at their own cost and expense. Owner(s) of a Parcel burdened by the East Irrigation Easement may be required to, at their own cost and expense, remove the fence if the fence interferes with the future use of the East Irrigation Easement.

1.4.4.3. No structure or improvements of any kind may be constructed on the surface of the East Irrigation Easement.

1.4.5. **Use and Maintenance of the East Irrigation Easement – Parcels 19 and 20:** All decisions concerning the use, maintenance, repair, or replacement of improvements on the East Irrigation Easement which are designed to serve only Parcels 19 and 20 shall be made by the owner of Parcels 19 and 20. All of the cost and expense associated with the use, maintenance, repair, and replacement of the improvements on the East Irrigation Easement which are designed to serve only Parcels 19 and 20 shall be paid for by the owner of Parcels 19 and 20.

1.4.6. **Use and Maintenance of the East Irrigation Easement – Parcels 1-18:** All decisions concerning the use, maintenance, repair, or replacement of improvements on the Middle Irrigation Easement which are designed to serve only Parcels 1 through 18 shall be made as provided for in Paragraph 2.3.6 hereinbelow.

1.5. **MIDDLE IRRIGATION EASEMENT.** The Middle Irrigation Easement is a non-exclusive easement thirty feet (30') in width consisting of the Easterly fifteen feet (15') of Parcels 5 and 14 and the Westerly fifteen feet (15') of Parcels 6 and 15.

1.5.1. **Use of the Middle Irrigation Easement:** The Middle Irrigation Easement may only be used for underground irrigation pipeline(s), together with, but not limited to, the right to install, replace, repair, maintain and use said pipeline(s).

1.5.2. **Parcels Burdened by the Middle Irrigation Easement:** Parcels 5, 6, 14, and 15 are burdened by the Middle Irrigation Easement.

1.5.3. **Parcels Benefited by the Middle Irrigation Easement:** Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 are benefited by the Middle Irrigation Easement.

1.5.4. **Restrictions on Use of Middle Irrigation Easement.** The following restrictions govern the use of the Middle Irrigation Easement:

1.5.4.1. The Middle Irrigation Easement described herein is for irrigation purposes only and no benefited Parcel Owner may use the Middle Irrigation Easement for any other purpose, including, but not limited to, a trail, path, or other course of travel by foot, horse, bicycle, or wheeled vehicle.

1.5.4.2. Any fence placed within the Middle Irrigation Easement area by the Owner(s) of a Parcel benefited by the Middle Irrigation Easement must be constructed in such a manner so as to not interfere with and/or damage below ground infrastructure improvements within the Middle Irrigation Easement area. In the event any fence is constructed within the Middle Irrigation Easement area by the Owner(s) of a benefited Parcel and said fence or the construction of said fence results in damage to the below ground infrastructure improvements located within the Middle Irrigation Easement area, then the Owner(s) of the Parcel causing said damage shall promptly repair the damage at their own cost and expense. Owner(s) of a Burdened Parcel may be required to, at their own cost and expense, remove the fence if the fence interferes with the future use of the Middle Irrigation Easement.

1.5.4.3. No structure or improvements of any kind may be constructed on the surface of the Middle Irrigation Easement.

**1.5.5. Use and Maintenance of the Middle Irrigation Easement – Parcels 19 and 20:** All decisions concerning the use, maintenance, repair, or replacement of improvements on the Middle Irrigation Easement which are designed to serve only Parcels 19 and 20 shall be made by the owner of Parcels 19 and 20. All of the cost and expense of the use, maintenance, repair, and replacement of the improvements on the Middle Irrigation Easement which are designed to serve only Parcels 19 and 20 shall be paid for by the owner of Parcels 19 and 20.

**1.5.6. Use and Maintenance of the Middle Irrigation Easement – Parcels 1-18:** All decisions concerning the use, maintenance, repair, or replacement of improvements on the Middle Irrigation Easement which are designed to serve only Parcels 1 through 18 shall be made as provided for in Paragraph 2.3.6 hereinbelow.

**1.6. IRRIGATION AND DRAINAGE EASEMENT.** The Irrigation and Drainage Easement is a non-exclusive easement described as the Northerly thirty feet (30') of Parcels 9, 8, 7, 6, 5, 4, 3, 2, and 1. The Irrigation and Drainage Easement is graphically depicted on Exhibit A as the "North Irrigation Easement."

**1.6.1. Use of the Irrigation and Drainage Easement.** The Irrigation and Drainage Easement shall be used for surface ditches, underground irrigation pipeline(s), and surface pipeline(s) for the purpose of collecting and distributing irrigation water, storm water, and diffuse surface water, together with, but not limited to, the right to install, replace, repair, maintain and use said ditch(es) and pipeline(s). The Irrigation and Drainage Easement shall also be used for the purposes of installing water measuring and metering equipment. The Owners of Parcels 19 and 20 shall have the right to enter onto the Parcels burdened by the Irrigation and Drainage Easement for the purpose of accessing the measuring and metering devices.

**1.6.2. Property Burdened by the Irrigation and Drainage Easement:** Parcels 1, 2, 3, 4, 5, 6, 7, 8, and 9 are burdened by the Easement.

**1.6.3. Property Benefited by the Irrigation and Drainage Easement:** Parcel 19 is benefited by the Easement.

1.6.4. **Restrictions on Use of Irrigation and Drainage Easement.** The following restrictions govern the use of the Irrigation and Drainage Easement:

1.6.4.1. No Owner(s) of the Parcels burdened by the Irrigation and Drainage Easement may alter the course of, block, or fill in the drainage ditch along the Northern edge of the Irrigation and Drainage Easement.

1.6.4.2. The Irrigation and Drainage Easement described herein is for irrigation and drainage purposes only and no benefited Parcel Owner may use the Irrigation and Drainage Easement for any other purpose, including, but not limited to, a trail, path, or other course of travel by foot, horse, bicycle, or wheeled vehicle.

1.6.4.3. Any fence placed within the Irrigation and Drainage Easement area by the Owner(s) of a Parcel benefited by the Irrigation and Drainage Easement must be constructed in such a manner so as to not interfere with and/or damage below ground infrastructure improvements within the Irrigation and Drainage Easement area. In the event any fence is constructed within the Irrigation and Drainage Easement area by the Owner(s) of a benefited Parcel and said fence or the construction of said fence results in damage to the below ground infrastructure improvements located within the Irrigation and Drainage Easement area, then the Owner(s) of the Parcel causing said damage shall promptly repair the damage at their own cost and expense. Owner(s) of a Parcel burdened by the Irrigation and Drainage Easement may be required to, at their own cost and expense, remove the fence if the fence interferes with the future use of the Irrigation and Drainage Easement.

1.6.4.4. No structure or improvements of any kind may be constructed on the surface of the Irrigation and Drainage Easement.

1.6.4.5. No water may be withdrawn from the Irrigation and Drainage Easement by pump or by gravity flow and used to irrigate a Parcel. All of the water flowing in the Irrigation and Drainage Easement shall be the property of Parcel 19.

## 1.7. **DRAINAGE DITCH EASEMENTS.**

1.7.1. **Drainage Ditch Easement A:** Drainage Ditch Easement A is described as follows:

An easement, 15.00 feet in width, across a portion of Parcels 7, 8 and 16 of that certain survey recorded November 10, 2003 in Book 29 of Surveys at pages 123-125, under Auditor's File No. 200311100033, records of Kittitas County, Washington, lying 7.50 feet on each side of the following described centerlines:

Beginning at the Northwest corner of said Parcel 7; thence S 88°56'59" E, along the north boundary of said Parcel 7, 83.63 feet to the true point of beginning for said described centerline; thence in a southerly direction along an existing drainage ditch, the following two courses: S 28°52'08" E, 105.80 feet; and S 34°13'21" E, 83.34 feet to the intersection of said drain ditch with a drainage ditch bearing northeasterly; thence continuing in a southerly direction along said drainage ditch the following five courses:

S 16°26'58" W, 57.01 feet; S 21°34'09" W, 120.36 feet; S 22°42'38" W, 97.47 feet;

S 03°06'08" E, 57.31 feet; and S 06°28'53" E, 438.97 feet to a point on the south boundary of said Parcel 16 which bears S 88°56'59" E, 146.95 feet from the southwest corner of said Parcel 16, and the end of said described centerline;

AND

Beginning at the Northwest corner of said Parcel 7; thence S 88°56'59" E, along the north boundary of said Parcel 7, 83.63 feet; thence in a southerly direction along an existing drainage ditch, the following two courses: S 28°52'08" E, 105.80 feet; and

S 34°13'21" E, 83.34 feet to the intersection of said drain ditch with a drainage ditch bearing northeasterly and the true point of beginning for said described centerline; thence in a northeasterly direction along said drainage ditch the following four courses: N 41°23'46" E, 66.57 feet; N 59°43'07" E, 36.09 feet; N 48°26'44" E, 39.74 feet; and

N 03°49'44" E, 63.42 feet to a point on the north boundary of said Parcel 8 which bears S 88°56'59" E, 3.24 feet from the northwest corner of said Parcel 8, and the end of said described centerline;

All located in the Southeast Quarter of Section 8, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington;

The sidelines of said easement to be lengthened or shortened to intersect the north boundaries of said Parcels 7 and 8 on the north, and the south boundary of Parcel 16 on the south.

**1.7.2. Use of Drainage Ditch Easement A.** Drainage Ditch Easement A shall be used for surface ditches, underground irrigation pipeline(s), and surface pipeline(s) for the purpose of collecting and distributing irrigation water, storm water, and diffuse surface water, together with, but not limited to, the right to install, replace, repair, maintain and use said ditch(es) and pipeline(s). Drainage Ditch Easement A shall also be used for the purposes of installing water measuring and metering equipment. The Owners of Parcels 19 and 20 shall have the right to enter onto the Parcels burdened by Drainage Ditch Easement A for the purpose of accessing the measuring and metering devices.

**1.7.3. Parcels Burdened by Drainage Ditch Easement A:** Parcels 7, 8, and 16 are burdened by Drainage Ditch Easement A.

**1.7.4. Parcels Benefited by the Drainage Ditch Easement A:** Parcel 19 is benefited by Drainage Ditch Easement A.

**1.7.5. Maintenance of Drainage Ditch Easement A:** All decisions concerning the use, maintenance, repair, or replacement of improvements on Drainage Ditch Easement A shall be made by the owner of Parcel 19. All of the cost and expense of the use, maintenance, repair, and replacement of the improvements on Drainage Ditch Easement A shall be paid for by the owner of Parcel 19.

**1.7.6. Restrictions on Use of Drainage Ditch Easement A:** The use of Drainage Ditch Easement A by the Owner(s) of the Parcels benefited and burdened by Drainage Ditch Easement A is subject to the following terms, conditions, and restrictions:

1.7.6.1. The Owner(s) of the Parcels burdened by Drainage Ditch Easement A may not construct any improvements or structures in the Drainage Ditch Easement A area which interfere with the free flow of water in the drainage ditch located on Drainage Ditch Easement A.

1.7.6.2. The Owner(s) of the Parcels burdened by Drainage Ditch Easement A may not pipe or re-route the drainage ditch located on Drainage Ditch Easement A.

1.7.6.3. Any fences which are located in the Drainage Ditch Easement A area shall have gates installed so that a mechanized tractor is able to travel the length of the drainage ditch located in the Drainage Ditch Easement A area as said drainage ditch crosses the burdened Parcel.

1.7.6.4. Any culverts placed in any drainage ditch described herein within the boundaries of a Parcel shall be of the same size as the culverts which are installed under Green Canyon Lane for Drainage Ditch Easement A and shall be installed in such a manner so as to allow for the free flow of water.

1.7.6.5. Any fence placed with in the Drainage Ditch Easement A area by the Owner(s) of a Parcel benefited by Drainage Ditch Easement A must be constructed in such a manner so as to not interfere with and/or damage below ground infrastructure improvements within the Drainage Ditch Easement A area. In the event any fence is constructed within the Drainage Ditch Easement A area by the Owner(s) of a benefited Parcel and said fence or the construction of said fence results in damage to the below ground infrastructure improvements located within the Drainage Ditch Easement A area, then the Owner(s) of the Parcel causing said damage shall promptly repair the damage at their own cost and expense. Owner(s) of a Burdened Parcel may be required to, at their own cost and expense, remove the fence if the fence interferes with the future use of Drainage Ditch Easement A.

1.7.6.6. No water may be withdrawn from Drainage Ditch Easement A by pump or by gravity flow and used to irrigate a Parcel. All of the water flowing in Drainage Ditch A Easement shall be the property of Parcel 19.

1.7.6.7. No structure or improvements of any kind may be constructed on the surface of Drainage Ditch Easement A.

**1.7.7. Drainage Ditch Easement B:** Drainage Ditch Easement B is described as follows:

An easement, 15.00 feet in width, across a portion of Parcels 2, 3, 12, 13 and 14 of that certain survey recorded November 10, 2003 in Book 29 of Surveys at pages 123-125, under Auditor's File No. 200311100033, records of Kittitas County, Washington, lying 7.50 feet on each side of the following described centerlines:

Beginning at the Northwest corner of said Parcel 2; thence S 88°56'59" E, along the north boundary of said Parcel 2, 118.38 feet to the true point of beginning for said described centerline; thence in a southeasterly direction along an existing drainage ditch, the following six courses: S 11°30'51" E, 42.64 feet; S 31°20'16" E, 155.56 feet;

S 47°14'01" E, 406.19 feet; S 46°30'22" E, 450.36 feet; S 38°17'32" E, 29.16 feet; and

S 29°45'02" E, 163.67 feet to a point on the south boundary of said Parcel 14 which bears S 88°56'59" E, 78.48 feet from the southwest corner of said Parcel 14, and the end of said described centerline;

AND

Beginning at the Northwest corner of said Parcel 2; thence S 88°56'59" E, along the north boundary of said Parcel 2, 118.38 feet; thence in a southeasterly direction along an existing drainage ditch, the following three courses: S 11°30'51" E, 42.64 feet;

S 31°20'16" E, 155.56 feet; and S 47°14'01" E, 162.00 feet to the intersection of said drain ditch with a drainage ditch bearing northwesterly and the true point of beginning for said described centerline; thence N 04°22'09" W, 282.04 feet to a point on the north boundary of said Parcel 3 which bears S 88°56'59" E, 17.74 feet from the northwest corner of said Parcel 3, and the end of said described centerline;

Located in the Southeast Quarter of Section 8, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington;

The sidelines of said easement to be lengthened or shortened to intersect the north boundaries of said Parcels 2 and 3 on the north, and the south boundary of Parcel 14 on the south.

**1.7.8. Use of Drainage Ditch Easement B.** Drainage Ditch Easement B shall be used for surface ditches, underground irrigation pipeline(s), and surface pipeline(s) for the purpose of collecting and distributing irrigation water, storm water, and diffuse surface water, together with, but not limited to, the right to install, replace, repair, maintain and use said ditch(es) and pipeline(s). Drainage Ditch Easement B shall also be used for the purposes of installing water measuring and metering equipment. The Owners of Parcels 19 and 20 shall have the right to enter onto the Parcels burdened by Drainage Ditch Easement B for the purpose of accessing the measuring and metering devices.

**1.7.9. Parcels Burdened by Drainage Ditch Easement B:** Parcels 2, 3, 12, 13, and 14 are burdened by Drainage Ditch Easement B.

**1.7.10. Parcels Benefited by Drainage Ditch Easement B:** Parcel 19 is benefited by Drainage Ditch Easement B.

**1.7.11. Maintenance of Drainage Ditch Easement B:** All decisions concerning the use, maintenance, repair, or replacement of improvements on Drainage Ditch Easement B shall be made by the owner of Parcels 19 and 20. All of the cost and expense of the use, maintenance, repair, and replacement of the improvements on Drainage Ditch Easement B shall be paid for by the owner of Parcel 19.

**1.7.12. Restrictions on Use of Drainage Ditch Easement B:** The use of Drainage Ditch Easement A by the Owner(s) of the Parcels benefited and burdened by Drainage Ditch Easement A is subject to the following terms, conditions, and restrictions:

**1.7.12.1.** The Owner(s) of the Parcels burdened by Drainage Ditch Easement B may not construct any improvements or structures in the Drainage Ditch Easement B area which interfere with the free flow of water in the drainage ditch located on Drainage Ditch Easement B.

1.7.12.2. The Owner(s) of the Parcels burdened by Drainage Ditch Easement B may not pipe or re-route the drainage ditch located on Drainage Ditch Easement B.

1.7.12.3. Any fences which are located in the Drainage Ditch Easement B area shall have gates installed so that a mechanized tractor is able to travel the length of the drainage ditch located in the Drainage Ditch Easement B area as said drainage ditch crosses the burdened Parcel.

1.7.12.4. Any culverts placed in any drainage ditch described herein within the boundaries of a Parcel shall be of the same size as the culverts which are installed under Green Canyon Lane for Drainage Ditch Easement B and shall be installed in such a manner so as to allow for the free flow of water.

1.7.12.5. No water may be withdrawn from Drainage Ditch Easement B by pump or by gravity flow and used to irrigate a Parcel. All of the water flowing in Drainage Ditch B Easement shall be the property of Parcel 19.

1.7.12.6. Any fence placed with in the Drainage Ditch Easement B area by the Owner(s) of a Parcel benefited by Drainage Ditch Easement B must be constructed in such a manner so as to not interfere with and/or damage below ground infrastructure improvements within the Drainage Ditch Easement B area. In the event any fence is constructed within the Drainage Ditch Easement B area by the Owner(s) of a benefited Parcel and said fence or the construction of said fence results in damage to the below ground infrastructure improvements located within the Drainage Ditch Easement B area, then the Owner(s) of the Parcel causing said damage shall promptly repair the damage at their own cost and expense. Owner(s) of a Burdened Parcel may be required to, at their own cost and expense, remove the fence if the fence interferes with the future use of Drainage Ditch Easement B.

1.7.12.7. No structure or improvements of any kind may be constructed on the surface of Drainage Ditch Easement B.

## 2. Irrigation Water.

2.1. **Irrigation Distribution System.** Declarant has installed an irrigation water delivery system within Easement Q, the Middle Irrigation Easement, and the East Irrigation Easement. Declarant has provided one irrigation riser for each of the Parcels 1 through 18 within Easement Q for the benefit of said Parcels. Parcel Owner(s) and their successors and assigns shall be responsible for any and all costs associated with connecting their Parcel to the irrigation distribution system on Easement Q. The Parcel Owner(s) shall further be responsible for the installation of a water meter at the irrigation riser serving the Parcel and will pay any and all costs associated with the installation of said water meter. Irrigation water may only be applied to Parcels 1 through 18 by sprinklers or drip irrigation systems located entirely on an individual Parcel to which irrigation water is being applied.

2.2. **Repair of Surface.** In the event that the repair, maintenance, enlargement or replacement of the existing irrigation distribution system results in the surface area being disturbed, the surface shall be returned to the condition it was in prior to the repair, maintenance, enlargement or replacement of the irrigation distribution system; provided, however, that the cost of restoring the condition of the surface shall be part of the cost of the repair, maintenance, enlargement, or replacement and shall be paid as provided above.

2.3. **KRD Irrigation Water.** Parcels 1-20 lie within the boundaries of the Kittitas Reclamation District ("KRD") and therefore are subject to rules and regulations established by KRD and the United States

Bureau of Reclamation (“USBR”) regarding irrigation water allotments and delivery. The Parcels above described have the following KRD assessed acres:

Parcel Number	KRD Irrigable Assessed Acres
1	3
2	3
3	1
4	1
5	1
6	1
7	3
8	3
9	3
10	3
11	3
12	3
13	2
14	2
15	2
16	3
17	3
18	3
19	85
20	1

2.3.1. KRD water may only be applied to assessed acres which are designated as irrigable by KRD and/or USBR. KRD water may not be applied to acreage that is not designated as irrigable. Full payment of annual KRD assessment is required regardless of the use or non-use of water by the Parcel Owners.

2.3.2. KRD is only responsible for delivery of water to designated distribution points within the KRD system described as NB 7.4-2.71, NB 7.4-3.2L, and NB 7.7-2.4R for these Parcels. KRD is not responsible for the following:

2.3.2.1. For water delivery loss, including but not limited to, loss from seepage, evaporation, use by others, or other loss of water, downstream of the designated distribution point or metering point; and

2.3.2.2. For delivery of irrigation water to the irrigation meter on each individual Parcel; and

2.3.2.3. For the use, operation, maintenance, and repair of the irrigation system.

2.3.3. One Water Master will be appointed for each distribution point from the KRD canal and lateral system (hereinafter referred to as a “Distribution Point”).

2.3.3.1. The Water Master for Distribution Point NB 7.4-2.71 shall be the Owner of Parcel 19. This takeout only supplies water to Parcels 19 and 20.

2.3.3.2. The Water Master for Distribution Point NB 7.4-3.2L shall be the Owner of Parcel 19. This takeout only supplies water to Parcels 19 and 20.

2.3.3.3. The Water Master for Distribution Point NB 7.7-2.4R shall be the Owner of Parcel 19. This takeout supplies irrigation water to Parcels 1 through 18 and Parcel 19.

2.3.4. **Water Master Duties.** The water master is the only person authorized to order water for all of the Parcels from KRD. The water master will be responsible for keeping water use records for each parcel. KRD will only be responsible for keeping records on the total water ordered at the KRD Distribution Point. The water master shall ensure KRD water is only applied to classified acres, ensure that each Parcel receives only its entitlement, ensure that private distribution systems are maintained, ensure all users are notified when water is ordered, both on and off (this includes water users not within a given plat but share a common ditch). The water master shall have the authority to adopt such rules and regulations as are necessary to efficiently deliver irrigation water to all of the benefited property. This may include, but not be limited to, the right to designate days when specific Parcels can and cannot irrigate. The Owner of a Parcel designated as the Water Master above in Section 2.3.3 may delegate its duties as Water Master to a third party. In the event the Parcel owner does delegate his duties as water master to a third party that designation will be communicated in writing to the KRD and to each Parcel entitled to use water from the designated Distribution Point. In the event a Designated Water Master is unable to continue as Water Master and or resigns as Water Master then a new water master shall be elected by majority vote of the Parcel owners entitled to use the designated Distribution Point. In the event a new water master is elected as provided for herein then the name of the newly elected water master will be communicated in writing to the KRD and to each Parcel entitled to use water from the designated Distribution Point.

2.3.5. **Creek Water Right.** Declarant declares and states that there is a creek water right which is described as follows:

CLAIMANT NAME:	Willowbrook Farms II, LLC	COURT CLAIM NO. 00520 (A) 05669
Certificate Number:	S4-83590-J	
Subbasin:	07 Reecer Creek	
Source:	An unnamed stream	
Use:	Irrigation of 65 acres	
Period of Use:	March 15 through October 15	
Quantity:	2 cubic feet per second, 260 acre-feet per year	
Priority Date:	June 30, 1882	
Point of Diversion:	1) 5 feet south and 5 feet west from the east quarter corner of Section 8, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M. 2) 1000 feet south and 875 feet west from the east quarter corner of Section 8, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M.	
Place of Use:	That portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M. lying south and east of an unnamed stream.	

(hereinafter referred to as the "Creek Water Right"). Regardless of the description of the authorized place of use in the above water right summary, the Creek Water Right may only be used by the owner of Parcel 19. Parcels 1 through 18 have no right to use the Creek Water Right for irrigation purposes.

**2.3.6. Use and Maintenance of Irrigation Distribution System Serving Parcels 1-18:**

All decisions concerning the use, repair, replacement, maintenance, or reconstruction of the irrigation system components, including, but not limited to pipelines, gates, valves, measuring devices, diversion boxes, and other irrigation equipment (hereinafter the "Irrigation Improvements") designed to serve Parcels 1 through 18, shall be agreed upon by a majority vote of the owners of the Parcels benefited by the Easement or Irrigation Improvements in question. For purposes of this Agreement, Parcels 1 through 18, inclusive, shall each have one vote. Only Parcels having a beneficial use of the Easement or Irrigation Improvements in question (hereinafter the "Affected Parcel Owners") shall be entitled to vote on matters related thereto. For purposes of this paragraph, "beneficial use" of the Irrigation Improvements shall be deemed to begin upon connection to the Irrigation Improvements by a Parcel.

2.3.6.1. In the event the Affected Parcel Owners shall determine by majority vote that an Irrigation Improvement is in need of repair, replacement, maintenance or reconstruction (hereinafter collectively "Maintenance"), the Affected Parcel Owners shall share equally in the cost of such Maintenance, based upon the number of votes as provided hereinabove. Each vote shall equate to a share in said cost; provided, however, Declarant shall not be assessed any Maintenance Cost under the provisions of this Agreement. When a decision is made to perform Maintenance to an Improvement, the Affected Parcel Owners shall establish an account for said purpose. The account shall be managed by a Parcel Owner or a designated management company, as agreed upon by a majority of votes by the Affected Parcel Owners. Each Affected Parcel Owner shall pay its share of the estimated cost of the work into said account within thirty (30) days of written request. In the event the amount paid into the account is not enough to pay the actual cost of the approved Maintenance, each Affected Parcel Owner shall pay its share of any shortage into the account. If any Affected Parcel Owner fails to pay its share of the cost of Maintenance when due, the remaining Affected Parcel Owners, individually or collectively, may pay the defaulting Parcel Owner's share and may record a lien against the defaulting Parcel Owner's real property in favor of the Parcel Owner(s) who advanced the payment. Said lien may be enforced pursuant to the law of the State of Washington. The lien does not have to be foreclosed or otherwise enforced within any specific time period.

2.3.6.2. No Parcel Owner may upgrade or perform Maintenance on the Irrigation Improvements without majority approval by Affected Parcel Owners.

2.3.6.3. In the event any Parcel Owner(s) disturb the surface above any of the Irrigation Improvements on the Easement for the benefit of their own Parcel(s), or through excessive wear and tear, or for any reason damage the Irrigation Improvements, the Parcel Owner(s) responsible for such damage shall be responsible for repairing and restoring such damaged Irrigation Improvement to its prior condition, at that Parcel Owner(s)' sole cost and expense.

**2.4. Restriction on Use of KRD Roads.** KRD operations and maintenance roads are for KRD use only. Residential and/or recreations use of KRD roads is prohibited.

**2.5. No Representations or Warranties.** Declarant makes no representations or warranties as to the existence; validity and/or ability of any Parcel Owner to use, receive, or benefit from any water or water rights referenced herein. Declarant further states that failure to use all or a portion of said water rights may result in a relinquishment, under Washington law, of the unused portion of water.

**3. Hold Harmless and Indemnification.**

3.1. Each Parcel Owner shall defend, indemnify and hold the Declarant, and other Parcel Owners harmless from any and all claims and causes of action which may accrue to or be suffered by any Parcel

Owner by reason of, arising out of, or resulting from the use by any of the Parcel Owners of the Improvements or the Easement Area or the use by that Parcel Owner's successors, assigns, employees, agents, lessees, licensees, invitees and guests, unless the claim or cause of action is caused by or results from the sole negligence of the owner of the burdened Parcel or its agents, tenant, invitees or employees. In the event of concurrent negligence of the Parcel Owners or their agents, tenants, invitees or employees, each such Parcel Owners shall be responsible only to the extent of its own negligence and that of its agents, tenants, invitees and employees.

3.2. Declarant agrees defend, indemnify and hold the Declarant harmless from any and all claims and causes of action which may accrue to or be suffered by Declarant by reason of, arising out of, or resulting from the construction and/or installation of Improvements on the Green Canyon Property by Declarant, its successors, assigns, employees, agents, lessees, licensees, invitees and guests, unless the claim or cause of action is caused by or results from the sole negligence of the Declarant or its agents, tenant, invitees or employees. In the event of concurrent negligence of the Declarant and Declarant or their agents, tenants, invitees or employees, each shall be responsible only to the extent of its own negligence and that of its agents, tenants, invitees and employees.

4. **Eminent Domain.** If any Easement described herein, or any part thereof, is taken by any governmental agency in the exercise of its power of eminent domain, the award granted under such proceedings, or any settlement in lieu thereof, for the taking of such property shall be payable to the fee owner of the portion of the Easement area which is taken. If all or any part of the Easement area is taken, this Agreement shall terminate with respect to the portion so taken and the obligations hereunder of the then owners of the Easement area shall automatically cease and terminate when possession is transferred to the condemning agency with respect to any portion of the Easement area so condemned; provided, however, that nothing herein prevents the owner(s) of the property benefited by the Easement from seeking compensation from the condemning agency, only, for loss of the Easement.

5. **Easements and License Runs with the Land.** The Easements and License granted and the restrictions and covenants established herein shall run with and shall bind and be obligatory upon the properties described herein; provided that, anything herein to the contrary notwithstanding, no rights in or to the general public are created hereby.

6. **Dispute Resolution.** The Parties intend that any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims (collectively referred to as a "Dispute"), shall be resolved using a phased approach to the resolution of Disputes that might arise between the Parties as described below.

6.1. **Phase I Dispute Resolution.** In the event of a Dispute, the Parties will meet and discuss the resolution of the Dispute(s) amongst themselves in good faith. In the event the Parties are unable to resolve the Dispute(s) through good faith meetings and discussion, then either Party may request, in writing, that Phase II of the dispute resolution process be used (Mediation Notice).

6.2. **Phase II Dispute Resolution-Mediation.** In the event the Parties resort to Phase II of the dispute resolution process, then the Parties shall select a mediator who shall be an independent party within twenty-one (21) days of the date of the Mediation Notice. The Parties agree to, in good faith, engage in mediation with the third-party mediator to resolve the Dispute. In the event the Parties are unable to agree upon a mediator, then each Party shall each select a mediator and the two selected mediators shall select a third mediator who shall mediate the Dispute(s) between the Parties. The Parties agree to split the costs of the

mediation with each Party paying one half of the mediation fees and costs charged by the mediator(s). All mediation shall be conducted pursuant to the Uniform Mediation Act which is codified at Chapter 7.07 of the Revised Code of Washington. In the event the Parties, after twenty-one (21) days of the commencement of mediation, are unable to resolve the Dispute(s) through mediation, then either Party may request, in writing, that Phase III the dispute resolution process be used (Arbitration Notice).

6.3. **Phase III Dispute Resolution-Arbitration.** Should no resolution of the issues be reached in Phase II of the dispute resolution process, the Dispute may then be submitted by either Party for arbitration. The arbitration shall be conducted and processed, including any review of the Arbitrator's decision, pursuant to the Uniform Arbitration Act which is codified at Chapter 7.04A of the Revised Code of Washington. In the event the Parties are not able to agree on an arbitrator within 21 days of the Arbitration Notice, then each Party shall select an arbitrator and the arbitrators so selected shall then select an arbitrator who shall preside over the arbitration. The costs of the arbitration shall be allocated to the Parties as determined by the Arbitrator.

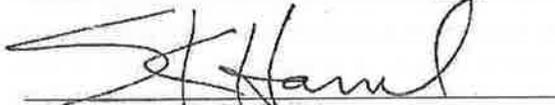
7. **Legal Expenses.** If any party is required to bring or maintain any action (including assertion of any counterclaim or cross-claim, or claim in any proceedings in bankruptcy, receivership, or any other proceeding instituted by a party hereto or by others), or otherwise refers this Agreement to an attorney for the enforcement of any of the terms and conditions of this Agreement, the prevailing party in such action shall, in addition to all other payments required, receive from the other all the costs incurred by the prevailing party, including reasonable attorney fees and such costs and reasonable attorney fees which the prevailing party may incur on any appeal.

8. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, assigns and legal representatives.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**DECLARANT:**

GREEN CANYON PROPERTIES LLC



By: SUSAN K. HARREL

Its: Co-Managing Member

STATE OF WASHINGTON )  
 ) ss.  
County of Kittitas )

I certify that I know or have satisfactory evidence that SUSAN K. HARREL is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as a Co-Managing Member of GREEN CANYON PROPERTIES LLC, a Washington limited liability company, the corporation that executed this instrument as the free and voluntary act of corporation for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this 23rd day of July, 2021.



Amanda M. Clerf  
Printed Name: Amanda M. Clerf  
Notary Public in and for the State of Washington  
My commission expires: 08-09-2024

GREEN CANYON PROPERTIES LLC

*Paul Arley Harrel Jr.*

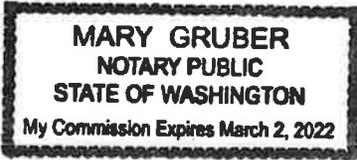
By: PAUL ARLEY HARREL, JR.

Its: Co-Managing Member

STATE OF WASHINGTON )  
 ) ss.  
County of King )

I certify that I know or have satisfactory evidence that PAUL ARLEY HARREL, JR. 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 a Co-Managing Member of GREEN CANYON PROPERTIES LLC, a Washington limited liability company, the company that executed this instrument as the free and voluntary act of the company for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this 26<sup>th</sup> day of July, 2021.



*Mary Gruber*  
Printed Name: Mary Gruber  
Notary Public in and for the State of Washington  
My commission expires: March 2, 2022

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