

**SCENIC EASEMENT TERMS AND CONDITIONS  
FOR STEHEKIN VALLEY RANCH NORTH PROPERTY (NPS TRACT NO. 08-108)**

This draft scenic easement is to be placed on the NPS Tract No. 08-108 in order to ensure current and future uses of the property would remain compatible with Lake Chelan National Recreation Area, including the rural character of the Stehekin community. These draft scenic easement terms and conditions are intended to inform the appraisal process and assist in determining the fair market value of the property for exchange purposes. They are also intended to function as mitigation measures to support the environmental impact analysis and Environmental Assessment that would accompany the proposal. Minor changes to the scenic easement terms and conditions could occur based upon the conclusions of the environmental assessment process, including public and agency review and comment and impact analyses.

The United States of America and its assigns has encumbered the property with a perpetual scenic easement for the purpose of maintaining the scenic appearance of the existing landscape elements that contribute to the rural character of the site, including the open space, riparian and forested elements of the site, the ranching uses, and the scenic views across the property as referenced by the Stehekin Valley Road. This scenic easement is intended to preserve landscape elements without adversely affecting the uses or the capabilities of the land for residential, existing agricultural and ranching purposes, or adversely affecting the practices, customs, and use characteristics typical and customary to the local area which now exist or may develop in the future. This scenic easement is not intended to prohibit or otherwise adversely affect the diversification and economic viability of the residential, agricultural, ranching, or recreational tourism activities that now exist nearby or may hereafter be developed on the land. This scenic easement does not impose or reserve unto the general public any right of ingress or egress over or across lands or any other rights of the general public usage(s) unless specifically reserved by this encumbering easement reservation or without further specific provisions by the Vendees, their successors or assigns.

The restrictions hereby imposed upon the uses and activities conducted upon the herein described land, the acts which the Vendors covenant to do or refrain from doing upon the land, and the easement interests and rights in and to the land retained to the United States of America and its assigns by the Vendees are as follows, with reference to Exhibit C (hereinafter referred to as the "Map") which clearly identifies the various zones on the property:

**A. EASEMENT PROVISIONS APPLICABLE TO ZONE A (Building Zone)**

Zone A presently includes a mixture of open space, woodlands, and several structures including hay sheds, a barn, and corral. These structures and facilities support compatible agricultural and ranching activities on nearby private lands. Notwithstanding other provisions herein, these existing, non-historic structures may be maintained or replaced in kind (of same size, footprint, and location), as needed, and without notification.

Future uses and associated compatible development may include residential, agricultural, ranching, recreational, and ancillary or auxiliary building uses provided those uses fully comply

with local and state land use and zoning regulations, and the following scenic easement terms and conditions.

1. **Property Development** and other agricultural and ranching approved uses may occur in Zone A. Zone A may also be used as a temporary construction zone for the purposes of constructing residential and auxiliary structures provided that such construction is consistent with Chelan County zoning ordinances. If permissible and approved by Chelan County, new construction in Zone A may consist of:

- A. **Two (2) Single-Family Residential Structures and Three (3) auxiliary buildings (in addition to existing structures).** No more than two (2) single-family residences may be developed in Zone A. In addition, no more than a total of three (3) auxiliary buildings (e.g. garage, shed and pump and/or generator house) may be located, constructed or placed in Zone A to support the residential uses on the property.

1. Each residential structure shall not exceed 2,500 square feet (excluding basement) and shall not exceed 35 feet in height from the surface of the natural ground gradient adjacent to the building, to the highest peak of the roofs.
2. Each auxiliary building shall not exceed 1,500 square feet and shall not exceed 25 feet in height from the surface of the natural ground gradient adjacent to the building, to the highest peak of the roofs.
3. The single-family residential structures may be used as primary residences or as rentals for visitors, employees, or others so long as such uses 1) are permissible and approved by Chelan County, 2) remain consistent with the use of a single family residence, and 3) do not conflict, degrade, or impair the scenic values or intent of this scenic easement.

- B. **Two (2) ranching/agricultural buildings.** No more than two (2) new ranching/agricultural structures may be developed in Zone A. Each ranching/agricultural building shall not exceed 1,500 square feet and shall not exceed 25 feet in height from the surface of the natural ground gradient adjacent to the building, to the highest peak of the roofs.

2. **Development Plans.** Prior to applying for any Chelan County building permit, site preparation, including any mechanical topographic changes, or the actual construction, building, or siting of any new buildings, structures, or other improvements (including siting septic fields) in Zone A, the Vendees shall submit a detailed written plan to the Secretary of the Interior or their designated representative(s) (hereinafter referred to as the Secretary) for technical review and approval pursuant to Paragraph D.16 below. Any such plan shall include a site plan and detailed building plans for all structures, including but not limited to, paint, color, siding, roofing materials, and drainage control plan, including adequate setbacks from wetlands or surface waters and/or drainage control measures or other means of diffuse pollution control.

In developing and preparing this site plan, the Vendee shall note that Zone A includes the distal edge of a geologically hazardous landform known as a debris cone. Changes in the channel of an intermittent creek could bring water and mud into Zone A, which is also subject to rock falls from the adjacent steep valley wall. Given these geological hazards, the prepared site plan for any and/or all proposed permanent structures on the property shall be reviewed by a licensed geologist with knowledge of these hazards prior to submission to the Secretary (See Exhibit "D").

3. **Permits and approvals.** Vendees are responsible for obtaining all necessary prerequisite approvals and permits from various government entities, as well as complying with all local ordinances, including but not limited to Chelan County. Absent a formal affirmative response, Vendees should not assume that approvals and permits have been granted or will be approved by any local authorities or government entities for the preparation in the siting, construction, rehabilitation, remodeling, replacement, etc. of ancillary structures located or to be located in Zone A. Any documentation and/or applications, and administrative costs for such, required by local authorities, government entities or others will be the full and sole responsibility of the Vendees.
4. **Exterior finishes and appearance.** All new building exteriors shall be finished with wood materials (logs or alternatively of rough sawn lumber), suitable wood appearing substitutes, or stone, have nonreflective roofing and siding materials and finishes (except the windows) of rough sawn wood or wood appearing substitute material or stone. Exterior finishes shall be natural earth tone colors (e.g., browns, charcoal gray, and/or dark greens) to blend with the natural surroundings and native vegetation in the area and not distract from or be a noticeable visual contrast or intrusion upon the aesthetic viewshed of the property. However, if the structures are designed to utilize solar power, external solar devices and support structures shall not be considered as siding or roof materials when/if added to the structures listed under Paragraph A.1 above.
5. **Energy efficiency.** New structures shall incorporate energy efficient standards that minimize electricity and capable of utilizing alternative fuels (e.g., propane, compressed natural gas, solar power, etc.) Public power is available along Stehekin Valley Road within two miles of the property. The Vendees shall not make a request to extend power to the property. However, if electrical power does extend to this area in the Stehekin Valley, power may become available for Zones A and B-1, and Vendees are desirous to have public power, the Vendees are required and shall submit a plan to the Secretary and obtain approval pursuant to Paragraphs D.2 and D.16 below.
- 6.
7. **Ground Disturbance.** The planning phase will be attentive to the possibility for, as well as care and caution during construction to avoid, irreversible damage to, any archaeological or cultural material or archaeological objects or artifacts that may exist below the ground surface. Any proposed disturbance of any discovered archaeological or

Native American cultural material will be preceded by a site inspection and clearance by a National Park Service archaeologist.

8. **Routine maintenance.** The Vendees will have the right to perform ordinary maintenance and repairs on all existing and new structures in Zone A without the need to obtain approval from the Secretary pursuant to Paragraph D.16 below. If such structures are damaged or destroyed by fire, storm or other accidental casualty or deliberate act of vandalism by a third party, the Vendees have the right to rebuild and replace in the same location and in substantially the same size and form of the damaged or destroyed structure(s), as long as the new structure(s) meets the requirements and prescribed conditions of this scenic easement. Furthermore, the Vendees shall submit plans to the Secretary for approval pursuant to Paragraph D.16 below prior to any new site modification or construction of said buildings.
9. **Buffer.** All existing and new structures shall be screened to be unobtrusive when viewed from public use roads, trails and viewpoints, including, but not limited to, the Stehekin Valley Road. To aid this screening, the Vendees shall not cut, clear, or process trees, or remove brush within the southern 100 feet from the southerly boundary of Zone A except the Vendees may undertake activities, upon obtaining technical review and approval pursuant to Paragraph D.16 below, that will promote the health of the trees and vegetation in the buffer area such as selective cutting and removal of some individual diseased and infected trees that will limit the spread of disease or insects to neighboring forested properties. Any plantings in the buffer area shall be native to the lower Stehekin Valley. All imported plant soil or bedding materials and containers must be certified in advance of importation to be free of pests and pathogens not indigenous to the Valley.
10. **Trees.** Vendees shall obtain technical review and approval pursuant to Paragraph D.16 below prior to cutting, destroying or removing more than five (5) trees per acre in any one (1) calendar year, live or dead, in Zone A (notably, this total/year does not accumulate over time). Such authorization will not be unreasonably withheld; particularly when a tree presents a hazard to life or property. The Vendees are not limited in preventing vegetation such as trees, shrubs, or vines from encroaching into pasture or against foundations, walls and roofs of all buildings or structures located in Zone A. This condition does not apply to the initial clearing of vegetation for construction of a residence or auxiliary building.

#### **B. EASEMENT PROVISIONS APPLICABLE TO ZONES B-1 AND B-2 (Channel Migration Zone; No Build Zone)**

Zone B presently includes an agricultural field (designed as B-1) and riparian habitat in Zone B-2, which may continue to be inundated and/or eroded by the Stehekin River. Zone B is also entirely within the Channel Migration Zone (CMZ) of the Stehekin River; therefore, the purpose and intention of the restrictions imposed in Zones B-1 and B-2 is to preserve the scenic character and ecological function of the Channel Migration Zone (CMZ) of the Stehekin River as well as

to allow the Secretary to continue with the ongoing maintenance of the Stehekin Valley Road that is owned by the United States of America.

No buildings, structures, improvements are allowed to be constructed, moved, placed, located or sited in Zones B-1 and B-2, except as provided for in Paragraphs D.4 - D.7 below. Zone B-1 is to be maintained as undeveloped open space and may only be used for passive agricultural, recreational, ranching or open pasture purposes, and Zone B-2 is to remain as part of the riparian corridor without any development.

The Secretary has the right to protect the Stehekin Valley Road by performing flood control measures such as installing culverts, riprap, and other necessary stabilization materials along the embankment of the Stehekin River and/or the Stehekin Valley Road, or other types of activities the Secretary may deem necessary to protect and preserve the use and condition of the Stehekin Valley Road.

### **C. EASEMENT PROVISIONS APPLICABLE TO ZONE C (Forest Area; No Build Zone)**

Zone C includes two geologically unstable areas: a portion of the Channel Migration Zone (CMZ) of the Stehekin River and a debris cone associated with an unnamed, intermittent creek. Zone C is predominantly characterized as an unimproved and undeveloped forest and woodland parcel. Therefore, the purpose and intention of the restrictions imposed in Zone C is to preserve the scenic character of the forest area that has historically and currently exists on this relatively pristine and undeveloped forested area as well as protect the ecological function of the Channel Migration Zone (CMZ) of the Stehekin River.

More specifically, the goals of this scenic easement on Zone C are as follows: (a) allow natural conditions to maintain a naturally functioning forest ecosystem in a highly visible wooded condition which provides a scenic and a homogenous forested setting from nearby roads, trails and viewpoints; (b) maintain a wooded scenic corridor along Stehekin Valley Road; (c) provide for quality wildlife habitat; (d) maintain and enhance sustainable mature forest characteristics; and (e) allow for best silvicultural practices and forest management activities, as well as such other protection activities that must be approved by the Secretary pursuant to Paragraph D.16.

No buildings, improvements or structures of any kind may be constructed, moved, placed, located or sited in Zone C. Additionally, no new construction of permanent or year-round roadways, driveways, lanes, or changing or relocating the course of any existing roads (except Paragraph D.7 and the Secretary reserves a 20 foot width easement for future relocation of the Stehekin Valley Road) is permitted in Zone C unless authorized in plans approved in advance by the Secretary pursuant to Paragraphs D.7 and D.16 below.

Appropriate uses in Zone C include the following:

1. **Forest Management.** Management of forest resources located within Zone C will generally be limited or related to (a) those activities conducive and deemed appropriate to prevent fire, health and safety hazards; and/or (b) those activities which enhance the

development or maintenance of mature forest composition, structure, and function, except as otherwise approved by the Secretary pursuant to Paragraph D.16 below or mutually agreed upon by the parties in a written forest management plan. Management of Zone C will not include clear cutting or the extensive removal of the live overstory trees.

If any management action in Zone C is needed, a forest management plan shall first be approved by the Secretary pursuant to Paragraph D.16. The primary purpose of the forest management plan will be to ensure Zone C will be managed in a way that maintains its natural forest character, while allowing for the mutually agreed to application of management techniques under the terms of this document that are designed to continue the evolution of the forest to an ecologically complex condition similar to that which would be observed in unmanaged or mature forests growing under similar environmental conditions and adapting to natural disturbance processes within the Stehekin Valley region. Acceptable management techniques within this zone could involve thinning and removal of overstory and suppressed trees, planting of native species of trees and other appropriate vegetation, creation of snags and downed logs, or other techniques deemed appropriate for meeting the natural resource management goals stated above.

2. **Alternative uses.** It is the intention of this scenic easement to maintain Zone C as an undeveloped forest ecosystem in perpetuity. However, in the event changes in conditions resulting from earthquakes, earth movements, erosion, volcanism, floods, fire, wind damage, catastrophic weather or other (i.e., insects, diseases, process of natural succession, etc.) events destroys (the majority, substantially all, or all of) the trees in the forest and makes impossible or impractical to achieve its continued forest evolution as an undeveloped forest or woodland parcel, the Secretary may allow Zone C to be replaced with the No Build/Channel Migration Zone (CMZ) easement (excluding the use of open pasture) as described in Zone B of this easement document and/or the Secretary hereby reserves the right to plant vegetation, trees, shrubs within Zone C. The planting, development or natural establishment of trees and vegetation within Zone C will not be willfully or deliberately destroyed or treated with herbicides or other herbicide chemicals that would limit the growth, destroy, burn or damage the trees, shrubs and vegetation.
3. **Water.** A seasonal, unnamed stream traverses Zone C. This surface run-off water resource may be used for domestic irrigation purposes in support of ranching and agricultural uses pursuant to Paragraph D.16 to ensure the intermittent creek does not run dry for longer than its average term. However, it is recommended the Vendees obtain ground water as their primary and reliable source of water to be used for domestic irrigation purposes. Installation and maintenance of a pipeline and intake to support conveyance and a controlled distribution of this water resource from the intermittent creek may be authorized, together with reasonable measures needed to maintain the waterline and diversion intake. However, the Secretary may monitor and direct cease use of the intermittent creek to ensure it does not run dry for longer than its average term or that may have an adverse aquatic effect on the Stehekin River. Prior to any installation or

use of the intermittent creek, the Vendees are responsible for obtaining all necessary prerequisite approvals and permits from various government entities, as well as complying with all State and local regulations, including but not limited to Washington Department of Fish and Wildlife, Washington Department of Ecology, and Chelan County.

#### **D. EASEMENT PROVISIONS OF GENERAL APPLICABILITY OR APPLICABLE TO MORE THAN ONE ZONE**

1. **Debris flow and Drainage.** The property includes a geologic "debris cone", which is an unstable landform created by periodic debris flows from a small, steep intermittent stream. A future geological debris flow may cause the intermittent stream to change course and run through all zones within the property. The risk of potential damage to structures is minimal, but changes in the stream course may create drainage problems and other non-structural site alteration issues. Should drainage problems occur, the Vendees could consider bank stabilization. However, any proposed manipulation of the stream channel must be approved by the Secretary prior to disturbance of soil, water, or other natural resources or topographic conditions on the property pursuant to Paragraph D.16 below. It would also need approval from Chelan County, the Washington Department of Fish and Wildlife, and the U.S. Army Corps of Engineers.
2. **Public utilities.** No public utilities are currently available or permitted in Zones A, B-1, B-2, or C in order to protect the rural character of the area and to minimize expansion of the electrical grid in Stehekin, unless authorized by the Secretary pursuant to Paragraphs A.5 and D.16 for Zones A and B-1. Electricity may be provided by on-site generators, solar-voltaic collectors or other renewable energy technologies in Zone A. To mitigate noise from the on-site generators, all generators shall be located in an enclosed ancillary structure. No buildings will be served by aerial (overhead) electric or utility lines; all electrical or utility lines shall be buried.
3. **Radio Antennae, Alternative Energy etc.** No wind farms or hydro-power facilities shall be permitted. Vendees may install, build, or construct improvements for alternative energy production from renewable resources (including micro-wind and/or micro-solar power), including one windmill for every 5 acres on the property (except Zone C and B-2), and use the resulting power for on-site use provided that such improvements are exclusively for generating energy for permitted uses on Zones A and B-1 and do not impair the visual character of the landscape elements comprising the property or conflict with the intent of this scenic easement.

The location of telecommunication structures, radio antenna towers or dish antennas (satellite "earth-stations") is limited to Zone A and must be situated in a manner that will insure minimum visibility from the Stehekin Valley Road and screened from public view as may be acceptable to the Secretary. Any such improvements shall require advance

written notice to and consent of the design and location by the Secretary pursuant to Paragraph D.16, which consent shall not be unreasonably withheld.

4. **Driveway Access.** The Vendees have the right to build one (1) additional unpaved driveway for the purpose of providing ingress and egress access across Zone B-1 to Zone A if approved by Chelan County and/or other government entities; except no new driveways, lanes, access routes are permitted to be constructed, erected, or moved in Zone C. The Vendees have the right to maintain the existing and any new driveway access on the property. The current and any new driveway access shall be no more than twelve (12) feet in usable width. Prior to the construction and placement of any new driveway, written plans and designs shall be submitted to the Secretary pursuant to Paragraph D.16 below. The Secretary is not responsible for any repairs and/or maintenance of roadways or driveways that currently exist on the property or that may be later built, as permitted in this easement, by the Vendees. Any land use compliances required by Chelan County for the purposes of building a driveway access are the responsibility of the Vendees and a mandatory prerequisite before any construction or site development. However, the Secretary reserves the right for official and administration ingress and egress to the existing and any new roads or driveways located on the property pursuant to Paragraph D.16 below and to access other properties owned and managed by the United States of America that may be abutting, adjoining or nearby to the subject property. This reserved access right may include agency employees and contractors for the purpose of performing flood control measures or other activities that may affect the use and condition of the Stehekin Valley Road. However, the Secretary's reserved right of future access is not intended or to be implied for the general public use without specific permission by the Vendees.
5. **Fencing.** Vendees may construct, maintain, repair and replace existing or new fences in Zones A and B-1 for purposes of reasonable and customary management of horses and wildlife, safety and general management and to prevent trespass. However, the design and materials used for fences must approved by the Secretary pursuant to Paragraph D.16 below.
6. **Signs and On-Site Sale.** No advertising signs or display boards shall be installed or placed on the property except as follows: (a) vendees may post signage for no trespassing, no hunting, identifying the Vendees as owner of the property; (b) vendees may post signage for the advertisement of the sale or lease of the property; and (c) vendees may post signage for onsite sales including accessory uses, cottage industry/craft and home-based business, and agricultural and/or animal products grown or raised on site in Zones A and B-1.

All signage shall adhere to the following standards:

- A. Signs must be no larger than four (4) feet square in size.
- B. The placement of signs shall not exceed a maximum height of five (5) feet from the ground to the top of the sign.



- C. No illuminated, electric, neon or other lighted signage is permitted.
- D. All signage must conform to Chelan County sign standards.

7. **Secretary's Maintenance along, and the protection of, the Stehekin Valley Road owned by the United States of America.**

- A. **Flood Protection.** The Secretary hereby reserves the right to construct, place, repair, and maintain berm(s) in Zones B-1, B-2 or C as necessary for providing some flood control or preventing excess water runoffs onto the Stehekin Valley Road. The Secretary also hereby reserves, within the southerly 20-feet of Zones B-1, B-2 and C, the right to construct a temporary staging area for the purpose of accommodating equipment and materials necessary during the construction, repair, restoration, and maintenance of the berm(s), culvert(s), and the Stehekin Valley Road.
- B. **Vegetation and Soil.** The Secretary has the right to trim or remove underbrush, vegetation and trees that may affect the construction, repair, restoration, relocation, repaving, resurface, and maintenance of the berm and the Stehekin Valley Road. The Secretary may also bring in additional soils and materials necessary for the construction, repair, restoration, relocation and maintenance of the berm and/or road construction, repairs and maintenance of the Stehekin Valley Road.
- C. **Installation.** The Secretary shall notify the Vendees of the plans and schedule for the construction and/or other activities associated with the berm(s) or the Upper Stehekin Valley Road affecting Zones B-1, B-2 and/or C. Such notice will be as much in advance as possible; but in any event, no less than two (2) calendar weeks prior to any on-site activity with equipment or for topographic changes.
- D. **Relocation of Stehekin Valley Road.** The Secretary reserves a 20-foot width easement along the southerly boundary of Zones B-1, B-2 and C for the future purpose of relocation Stehekin Valley Road, if the excepting Stehekin Valley Road becomes compromised, damaged, blocked, destroyed or a safety risk for vehicle occupancy

- 8. **Subdivision.** The land herein described and identified as the property contains 17.46-acres, more or less and is described as Tract C on that certain Bureau of Land Management Dependent Resurvey and Survey Plat that was accepted, approved and officially filed on September 1, 1999, in the official public land records of the Bureau of Land Management Oregon State Office. If and as maybe permissible by Chelan County, the east 11.82-acres of Tract C which is a composite of Zones A and B-1 may be subdivided into two, 5-acre parcels. The west 5.64-acres (composite of Zones C and B-2)

shall be not be subdivided into any smaller ownership or be sold, alienated or conveyed separate or apart which is inconsistent with the purpose of this scenic easement.

9. **Livestock.** Cattle feed lots, dairies, feeder pig and hog finishing or similar operations are prohibited and may not be raised for commercial purposes or kept in a confined or controlled environment. Horses, poultry, and other livestock may be raised in limited numbers for personal uses and local sales in the Stehekin Valley only. Appropriate measures must be taken to protect livestock and their feed from predators to avoid human/wildlife conflicts. For example, feed should be stored inside secure buildings or in bear-resistant containers and small livestock such as goats or poultry must be kept inside or within bear-resistant electric fencing.
10. **Vehicles, Waste and Hazardous Substances Disposal and Storage.** The accumulation, dumping or allowing of trash, rubbish, garbage, waste, hazardous or contaminant materials and substances, or other unsightly or dysfunctional materials on Zones A, B, or C, or the keeping or continued presence thereon of junked, inoperative, or wrecked vehicles, equipment, or similar visual nuisance, unsafe and unsanitary items are strictly prohibited. No mobile homes, travel trailers, vehicles or motorized contrivance shall be used on the premises for camping, storage, or as a substitute for a residence or residential building or other purposes, unless in plans approved by the Secretary.
11. **Use of Pesticide, Herbicide.** No pesticide, herbicide, biocide, fertilizer or other chemical treatment for land, water, vegetation or animals shall be used if the use shall violate any applicable state, local or federal law or regulation. Use of chemicals, such as fertilizers and pesticides, is permitted but only as consistent with the label and the Vendees are required to obtain a permit through the National Pollutant Discharge Elimination System (NPDES) for the use of any fertilizer or pesticide that has the potential to move into waterways. Pesticides, herbicides, biocides, fertilizer or hazardous chemicals may be maintained or stored in Zone A only if such product can be safely contained and stored as recommended by the manufacturer of said product.
12. **Mining.** The United States of America reserves the mineral-estate, including but not limited to, all minerals of each and every kind, including mineral rights, sand, rock and gravel, bentonite, metals, gem stones, geothermal resources, hydrocarbons, limestone, coal, oil and gas, fossils and paleontological and geologic specimens, all archeological and pre-historic animal and human remains, and other mineral resources on or below the surface of the property.
13. **Archaeological Resources.** The Vendee cannot sell, transfer, convey or allow the disturbance or removal of any prehistoric Native American, or archeological object, data, or specimen situated either above or below the natural ground surface. The Secretary specifically retains the ownership of and the right to study, survey, test, excavate, or remove any prehistoric Native American, or archeological object or artifact. If archaeological resources or Native American cultural resources are discovered on the

property and the Vendees are aware of the resources, Vendees will notify the Secretary and allow the survey and study of said resources for a reasonable period. Said survey and study will be performed only after consultation with Vendees regarding timing of activities and access to the site of the archaeological resources on the property, so as to maintain the Vendees' privacy and not unreasonably disrupt uses on/of the property. Reasonable care shall be taken by the Vendees to avoid irreversible damage to archaeological or cultural resources on the property.

14. **General Public Access Not Granted.** No right of access by the general public over or across any portion of the property is implied or conveyed by this scenic easement or any right of usage not specifically authorized herein or by subsequent written agreement. The Vendees specifically have the right to exclude the public from trespassing, utilizing or accessing all areas of the property through all legally available means.
15. **Administrative Access.** The Vendees understand and acknowledge that this scenic easement is a perpetual encumbrance on the property and includes the necessity of reasonable administrative accessibility for insuring compliance with the terms and conditions herein and as otherwise described. The United States of America and its assigns, including the Secretary, its employees and authorized contractors, have the right, in the official performance of their duties, but with prior confirmed written notification to the Vendees or Vendees' designated representative (which written notice requirement are waived for emergency situations, i.e., fire, safety and health hazards, etc.), to enter upon the premises covered herein for the purposes of inspecting, accomplishing, and/or enforcing the rights and restrictions herein agreed to and placed on the property; provided, however, that the United States of America shall not be obligated in any manner to perform any act or take any affirmative action to accomplish the purposes stated herein and shall not be obligated in any manner to assume or pay any costs incurred thereof. Except under emergency situations, such inspection shall be conducted between the hours of 9 a.m. and 7 p.m. on a weekday that is not a legal holiday recognized by the State of Washington or at a date and time agreeable to Vendees and the holder of this scenic easement.
16. **Submission of Plans.** Whenever these restrictions require that action plans or requests for land uses be approved by the Secretary, requests shall be in writing and describe the complete proposal. Approval shall not be withheld or delayed unreasonably, and shall be deemed given or the requirement for advance approval satisfied if the Vendees have not received a reasonable written objection from the Secretary within 60 days of submission of their complete request, unless the Secretary has determined that he or she needs additional time in which to review a proposed plan or proposed use, in which case the Secretary may, prior to the end of such 60-day period, so notify the Vendees in writing, and may then take an additional 30 days (for a total of 90 days) in which to respond to Vendees' request for approval. Furthermore, whenever such approval is required, it shall not be arbitrarily or capriciously delayed or denied and may be withheld only upon a reasonable determination by the Secretary that the action as proposed would be

inconsistent with the purposes and intentions of the restrictions imposed under this scenic easement and cannot be modified to make the proposed action consistent with the purposes and terms of this scenic easement. Any approval may include reasonable conditions consistent with the purposes and terms of this scenic easement that must be satisfied in undertaking the proposed action, use, or activity.

17. **Notices.** Unless otherwise notified in writing by the Secretary, any notification, demand, request, consent, approval, or communication that the Vendees are required to give to the Secretary under the provisions of this easement shall be in writing and either served personally or delivered by first class mail service, postage prepaid, to the Superintendent of North Cascades National Park. Absent any successors to the Superintendent for the administration of this easement, Vendees' notification will be to the Regional Director or other delegated official of the National Park Service, Pacific West Region.
18. **Cost and Responsibilities.** The Vendees, or Vendees' successors or assigns, will be responsible for all costs arising out of the private ownership or uses of the property, including any taxes or assessments that may be levied against the property or the users of the property.
19. **Violations.** In the event of any violation of any covenant, condition, or restriction herein, the United States shall give the Vendees written notice of the violation. If the Vendees do not dispute that a violation of a covenant or restriction in this scenic easement has occurred, then the Vendees, at their sole expense, will take such steps as may be directed by the Secretary to correct such violation or noncompliance with the terms of this easement. If the Vendees fail to remedy any such violation or noncompliance within 60 days of receipt of an official written notice to do so, or if the Vendees fail to begin curing such violation or fail to continue diligently to cure such a violation until cured where the circumstances are such that the violation cannot reasonably be cured within a sixty-day period, then the Secretary may correct or cause to be corrected the violation or unacceptable condition provided the United States can do so without a breach of the peace and provided the Vendees consent to the United States's doing so, and thereafter may secure reimbursement for payment for expenses incurred from the Vendees for the cost thereof. If the Vendees dispute that a violation of a covenant or restriction in this easement has occurred after receiving a notice of a violation from the United States, then the United States may institute a suit to enjoin such violation by ex parte, temporary, or permanent injunction, and to require restoration of historic properties, landforms and every other part of the premises deemed adversely impacted by Vendees' actions, to their prior condition. Prior to commencing a suit to enforce any of the terms and conditions of this easement where there is a disagreement between Vendees and the United States as to whether a violation of the terms and conditions of the easement has occurred, Vendees and the United States shall first meet in good faith to discuss the disagreement and determine if there is a mutually acceptable resolution of the disagreement. If both Vendees and the United States agree to do so at such time, the disagreement may be submitted by the parties to arbitration or mediation on such terms and conditions as are

agreeable to the parties. The United States shall also have available all legal and equitable remedies including, without limitation, damages to enforce the Vendees' obligations hereunder.

20. **Acts beyond Vendees' Control.** Nothing contained in this scenic easement shall be construed to entitle the United States to bring any action against Vendees to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury or change in the property resulting from actions by a trespasser upon the Protected Property or causes beyond Vendees' control, including, without limitation, natural disaster, fire, flood, storm, pest infestation, earth movement, and climate change, and from any prudent action taken by Vendees under emergency conditions to prevent, abate, or mitigate significant injury to the property resulting from such causes. In the event the terms of this easement are violated by acts of trespassers, and Vendees have not undertaken suit itself, Vendees agree, at the option of the United States, to assign its right of action to the United States or to appoint the United States its attorneys in fact, for purposes of pursuing enforcement action against the responsible parties.
21. **Severability.** If the application or enforcement of these conditions and restrictions to any person or circumstances is subsequently found to be invalid, the remainder of the easement provisions shall not be affected.
22. **Perpetual Easement.** The provisions of this scenic easement shall be a perpetual encumbrance on the Protected Property and for the perpetual benefit of the United States of America and Lake Chelan National Recreation Area. The Vendees agree to either incorporate or make specific recording reference to the terms of this easement in any deed or other legal instrument by which they divest themselves of the property or otherwise create or impose any other interest or encumbrance on the entire property, including without limitation, a leasehold interest or mortgage. The failure of Vendees to perform any act required by this paragraph shall not impair the validity of this easement or limit its enforceability.
23. **Easement Amendment.** Vendees and the Secretary acknowledge that, in view of the perpetual nature of this scenic easement, they are unable to foresee all potential future land uses, future technologies and future evolution of the land and other natural resources and socio-economic factors relevant to local practices, and other future occurrences affecting the purposes of this easement. The Secretary therefore may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this easement or (b) alterations in existing uses or structures, are consistent with the purposes of this easement. Any legally permissible amendment hereto, and any discretionary consent by the Secretary contemplated by this scenic easement, may be granted only if the Secretary has determined in its reasonable discretion, that the proposed use furthers or is not inconsistent with the purposes of this scenic easement, substantially conforms to the intent of this grant, meets any applicable conditions expressly stated herein, and does

not materially increase the adverse impact of expressly permitted actions under this scenic easement on the conservation, scenic and cultural values of the protected property.

24. **Relief.** The Vendee, his heirs, successors, and assigns shall hold the Secretary, and its employees and representatives harmless for any liability arising out of the conveyance of properties in this land exchange and the covenants, terms, conditions, reservations, and restrictions agreed to herein. Approvals and actions by the Secretary on plans, designs, and requests for authorizations shall carry no warranty concerning safety, health, and/or human habitability. Nothing herein is intended to limit or interfere with any right Vendees may have to seek relief for property damages or personal injuries which may arise by the administration of this easement or the exercise of reserved rights by the Secretary, in accordance with the provisions of the Federal Tort Claims Act.
25. **No Transfer of Development Rights.** Vendor hereby reserves all development rights except as specifically granted to Vendees herein, for the limited purpose of insuring that such rights are forever terminated and extinguished and may not be used by Vendees or any other party, on or transferred off of the property to any other property adjacent or otherwise. Under no circumstances shall any portion of the property be used for the purpose of calculating or giving credits, which result in additional density of development, beyond what is allowed in this scenic easement, on or off of the property.
26. **Other Easements.** This scenic easement is made subject to all easements, rights-of-way, restrictions, covenants and rights of record as of the date of recording of this easement.
27. **Headings and Captions.** The headings and captions of the paragraphs in this instrument are for convenience and reference only and in no way define, describe or limit the scope or intent of this instrument or any of the provisions hereof.