



**HILARY S. FRANZ**  
COMMISSIONER OF PUBLIC LANDS

## **DRYLAND CASH LEASE**

Lease No. C1200106440

### **Section 1 Parties, Premises, Term, Use, and Payments**

Lessor:

DEPARTMENT OF NATURAL RESOURCES ("State")

NORTHEAST REGION

225 S SILKE ROAD

COLVILLE, WA 99114

(509) 684-7474

[northeast.region@dnr.wa.gov](mailto:northeast.region@dnr.wa.gov)

Lessee: **TBA @ Public Auction**

**1.01 Property Description.** State hereby leases to Lessee the following described property (“Premises”) S1/2NW1/4, Section 36, Township 33 North, Range 39 East, W.M., Stevens County, Washington, containing 80 acres, more or less, according to the government survey thereof., subject to the encumbrances and reservations, if any, as listed in Exhibit 1. Premises is shown on map in Exhibit 2F.

**1.02 Term.** This lease shall commence on June 1, 2024 (“Commencement Date”), and shall expire on May 31, 2034 (“Termination Date”).

**1.03 Condition of Premises.** Taking possession of the Premises by Lessee shall constitute acknowledgment by Lessee that the Premises are in good and tenantable condition and that the Premises are in all respects suitable for the uses permitted in Section 1.04. The State has no obligation to make any repairs, additions, or improvements thereto and expressly disclaims any warranty that the Premises are suitable for such permitted use(s). Lessee acknowledges its use of the Premises is subject to State’s exercise of State’s reservations as set forth in Subsection 5.03.

**1.04 Permitted Use, Rent, Taxes, and Assessments.** The Lessee shall use the Premises for the Permitted Use(s) identified below and no other. Lessee shall pay rent, subject to adjustment as provided in this Section 1, on the due date and annually thereafter. Lessee shall pay all taxes, assessments, and utilities as required under Subsection 1.12.

<b>Period:</b> June 1, 2024 - May 31, 2024			
<b>Payment Due Date:</b> June 1, 2024			
<b>Permitted Uses/Payments</b>	<b>Acres</b>	<b>Description</b>	<b>Annual Amount</b>
Wildlife Habitat	48.40	Wildlife Habitat	\$0
Dryland Agriculture	31.60	Cereal Grain, Oil Seed, Legumes, Hay	\$1,000.77
<b>Payment Summary</b>			<b>Amount</b>
Rent			\$1,000.77
Rent Subject to Leasehold Excise Tax			\$1,000.77
Leasehold Excise Tax (12.84%)			\$128.50
*Non-Taxable Rent			\$0.00
Weed Assessment - Stevens County			\$12.00
Assessment Total			\$12.00
<b><u>Payment Required on Due Date</u></b>			<b><u>\$1,141.27</u></b>

Conservation Reserve Program. When State is eligible for payments for participation in the Conservation Reserve Program (“CRP”) or similar non-tillage programs under applicable federal farm legislation, State’s share shall be as stated in the CRP contract(s) or other farm program contracts for the lease premises. If the CRP contract(s) expires or otherwise terminates prior to the end of the Term, the Lease shall be automatically amended upon notice to Lessee of the new rent for the approved Permitted Use, which rent shall be determined pursuant to Section 1.10.

Commodity Program Payments. When State is eligible for payments for participation in Direct and Counter-Cyclical Payment Program or other commodity programs under applicable federal farm legislation, State’s share of payments for base acreage shall be the stated crop share percentage in this subsection if the Premises are farmed or in a crop rotation. If the Premises are not farmed, State’s share shall be 50% (including leasehold tax) of the commodity program payments, or as stated in any farm program contract(s) for the Premises.

**1.05 Change in Permitted Use.** In the event Lessee desires a change in acreage, crops, or use, including grazing, authorization must be obtained in advance and in writing from State. Approval may be conditioned upon adjustment of the payments identified in Subsection 1.04, in accordance with changes in acreage, crops, or use. If approved, a written Change in Permitted Use authorization will be provided to Lessee, which shall automatically amend this Lease on the date the Change in Permitted Use becomes effective by its terms. Permitted use(s) may be further limited by Section 2. The Lessee shall put the Premises to full beneficial use in accordance with customary industry standards, the permitted use(s), acres, and crop(s) designated herein, and any plan of development schedules identified herein. Failure to do so will be grounds for default.

**1.06 No Counterclaim, Setoff, or Abatement of Rent.** Rent and all other sums payable by Lessee hereunder shall be paid without the requirement of prior notice or demand by State, and shall not be subject to any counterclaim, setoff, deduction or defense and without abatement. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected.

**1.10 Adjustment of Rent.** State shall adjust rent at the following times: at intervals of every 5 years beginning June 1, 2029; on the effective date of State’s approval of any new permitted use; and on the execution date of any new CRP contract or termination or expiration of any CRP contract.

Adjusted rent in each of the foregoing circumstances shall be determined by State through an evaluation of fair market rental value. Failure on the part of State to establish a new rent by the Adjustment Date shall not preclude State from doing so then or thereafter, and the adjusted rent shall be retroactive to the Adjustment Date, unless otherwise provided by State.

**1.12 Taxes, Assessments, and Utilities.**

Lessee shall:

- (a) Pay all federal, state, and local taxes, penalties, and interest owing due to Lessee's failure to pay such taxes, penalties, and interest, including, but not limited to, personal property tax and leasehold excise tax in accordance with RCW 82.29A, as it may be amended from time to time, that may be charged against the lease and improvements located on the Premises. Leasehold excise tax will be billed at the time rent is due;
- (b) Pay all assessments that may be charged against the Premises unless otherwise approved in writing by State due to a shared use of the Premises authorized by State pursuant to Subsection 5.03. Lessee's responsibility to pay an assessment shall never be reduced below Lessee's share of the use and control of the Premises. Assessments will be billed at the time rent is due, and may include collection of payments for more than one billing cycle, or on another schedule determined by State to avoid administrative costs associated with billing. Lessee's obligations under this subsection are not limited to assessments relating to the encumbrances, if any, listed in the legal description and set forth in Section 1, but extend to all assessments that may be charged against the Premises, including, but not limited to, weed assessments, watershed protection district assessments, conservation district assessments, storm water runoff assessments, and local improvement district assessments; and
- (c) Be liable for all electrical power and other utility charges or expenses associated with Lessee's use of the Premises, including, but not limited to, power minimums and disconnect charges incurred prior to termination or expiration of this lease.

**1.13 Interest Penalty for Past-Due Rent and Other Sums Owed.** The Lessee shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the commencement date hereof), until paid, on rent or other sums owing under the terms of this Lease, commencing the date such rent or other sum is due and payable. In the event State pays any sum or incurs any expense which Lessee is obligated to satisfy or pay under this Lease, or which is made on behalf of Lessee, State shall be entitled to receive reimbursement thereof from Lessee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

## **Section 2 Land Management**

**2.01 Management.** The Lessee shall manage and maintain the Premises, and all improvements related to Lessee's use of Premises regardless of ownership thereof, in accordance with customary standards of the industry. In addition, Lessee shall:

- (a) Follow the Resource Management Plan ("RMP") attached hereto as Exhibit 2A and by this reference made a part hereof. The State shall have the right to amend the RMP to meet future needs or changes in circumstances or Permitted Uses.

- (b) Upon request of State, and jointly with State, enter into a Management Agreement (“MA”) on terms and conditions acceptable to State, which, upon joint execution shall automatically amend and be made a part of this Lease, and a copy thereof shall be attached as Exhibit 2B. The MA shall identify specific management objectives for Lessee’s operation and the specific steps or practices which Lessee shall implement in order to meet these objectives. The Lessee shall meet the specific management objectives by the dates outlined in the MA. The State shall have the right to amend the MA to meet future needs or changes in circumstances.
- (c) The Lessee acknowledges that a Coordinated Resource Management (“CRM”) plan either has been or may in the future be developed between Lessee, State and other landowners in the general location of the Premises for the protection, preservation, and use of agricultural and grazing premises under multiple ownership. Lessee shall cooperate with State and other landowners to complete or develop a CRM plan. After a CRM plan has been developed, this Lease shall automatically be amended to incorporate the terms of the CRM plan by attaching the CRM plan as Exhibit 2C
- (d) Perform and furnish all labor, equipment and materials including, but not limited to, seed, fertilizer, agricultural chemicals, and farm tools sufficient for the production and harvest of all crops.
- (e) Manage the Premises to procure the highest economically feasible return therefrom. Comply with all measures State may require to prevent the commingling of crops or confusion of the proceeds from the Premises with any other premises, whether or not operated by Lessee. For yield calculations and payments pursuant to Subsection 1.07, no crop from States land may be commingled with a like crop without prior written approval from State.
- (f) Incorporate all crop residue and stubble into the soil at a time and by a tillage method recommended by the County Extension Agent (Agent) or the NRCS Soil Conservation Technician (Technician) for the local area, so as to comply with all state and federal laws relating to water and air quality, and to avoid soil erosion. Any deviation from the technical recommendations by the Agent or Technician must be authorized in writing by State.

**2.02 Waste.** The term hazardous substance means any substance or material as those terms are now or are hereafter defined or regulated under any federal, state, or local law, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.*, as administered by the U.S. Environmental Protection Agency or the Washington Model Toxics Control Act (“MTCA”), RCW 70.105D, as administered by the State Department of Ecology.

Lessee shall immediately assume responsibility for a hazardous substance release (“spill”) caused by Lessee or its employees, sublessees, agents, assigns, authorized users, contractors, subcontractors, licensees, or invitees (“Permittees”) on or adjoining the Premises.

As responsible party, Lessee shall:

- (a) Immediately notify all necessary emergency response agencies, as required under federal, state, and local laws, regulations, or policies.
- (b) Following emergency response agency notifications, notify State of all spill releases and Lessee actions completed for spill reporting and actions planned or completed toward spill cleanup. State notification requirements are “same business day” notification for normal state work days and “next available business day” notification for weekends and holidays.
- (c) At Lessee’s sole expense, conduct all actions necessary to mitigate the spill release. Mitigation response actions may include, but are not necessarily limited to, initial release containment, follow-up site cleanup and monitoring actions, and continued contact and coordination with regulators and State, as defined under the aforementioned laws, regulations, and policies, and this lease.
- (d) Other than performing initial emergency response cleanup/containment actions, obtain approvals in advance of all site cleanup actions (e.g. site characterization investigations, feasibility studies, site cleanup and confirmation sampling, and groundwater monitoring) conducted on State lands, in coordination with regulatory agencies and State.
- (e) Obtain and understand all necessary hazardous substance spill release notification and response mitigation requirements, in advance of conducting Lessee operations on State land.

Lessee shall be fully and completely liable to State, and, to the extent permitted by law, shall indemnify, defend (with counsel acceptable to State), and save harmless State and its employees, officers, and agents with respect to any and all damages, costs, fees (including attorney's fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Lessee's use, disposal, transportation, generation, and/or sale of hazardous substances or that of Lessee's Permittees and for any breach of this subsection.

**2.03 Plan of Development.** Any proposed changes in acreage, crops, or use of the Premises must be submitted in writing to, and approved by, State as a plan of development. The State will review the plan and, if acceptable, issue written approval. The Lessee shall perform all development according to the terms of the approved plan of development.

**2.04 Federal Farm Program.** If Lessee is enrolled in any federal farm program at any time during the lease term, Lessee shall conform to United States government federal farm program requirements as they now exist, or as they may be amended, to maintain eligibility related to program participation. Deviations from such programs are permissible only if allowed, in advance, in writing by State. Participation in any land retirement program must have prior written approval from State. Unless otherwise agreed, if Lessee is enrolled in one or more CRP contract(s) that extend beyond the expiration of this Lease and Lessee is not issued a new lease for the premises at its expiration, Lessee shall take all necessary action to terminate its participation and relinquish its rights in the CRP contract(s) to allow State or the new lessee or owner to become a successor to the existing contract or a participant to a new contract under the same terms and conditions as the existing contract.

The Lessee shall be reimbursed the residual value of Lessee's actual expenses incurred to establish eligible practices required by the existing CRP contract(s) subject to the following: Actual expenses will be taken from Form AD-245, or a similar form approved by the Commodity Credit Corporation, and offset by all cost-shares received from or payable by the Commodity Credit Corporation and any other source. Straight line depreciation will be used to determine the residual value of these expenses over the duration of the CRP contract(s) with a salvage value of zero at the expiration of the contract(s). The residual value of these expenses will be collected at the time of public auction and the money so collected will be remitted to Lessee, less the value of any damages or waste to the property caused by Lessee.

**2.06 Limitations on Use.** In connection with Lessee's use of the Premises, Lessee shall:

- (a) Conform to all applicable laws, rules and regulations of any public authority affecting the Premises, including crops grown on the Premises. The Lessee shall provide to State, within ten (10) days of receipt of same, a copy of any notice received from any public authority which indicates that Lessee is not in compliance with applicable laws, rules and regulations. In addition, Lessee shall bear, at Lessee's sole expense, any costs associated with bringing the Premises and crops into compliance, including any attorneys' fees, costs, fines or penalties;
- (b) Remove no valuable material or timber, without prior written approval of State;
- (c) Take all reasonable precautions to protect the Premises from fire, and make every effort to report and suppress such fires as may occur;
- (d) Lessee shall be solely responsible for securing and maintaining any licenses, permits or approvals necessary for Lessee's activities on the Premises;

- (e) Use only electric fences approved by Underwriters Laboratories;
- (f) Not live, reside, or permit others to live or reside on the Premises without prior written approval from State.

**2.08 Condition of Premises at End of Lease.** Prior to vacating the Premises, Lessee shall leave the Premises and improvements described in Exhibit 3 to which State has elected to claim title in the state of repair and cleanliness required to be maintained by Lessee during the term of this lease.

**2.09 Cultural Resources Management.** If ground disturbing activities associated with development of the lease parcel expose cultural resources, all work will cease in that location and Lessee shall notify State.

### **Section 3 Improvements**

**3.01 Authorized Improvements.** No improvement shall be placed on the lease premises without the prior written consent of the State. Consent shall be granted through this lease or a written Letter of Authorization issued by the State. Unauthorized improvements shall either be removed by the Lessee without damage to the lease premises, removed by the State at the Lessee's expense, or become the property of the State, at the State's option.

All improvements currently on the lease premises belong to the State except those authorized improvements which, if any, are listed in Exhibit 3. Exhibit 3 may be supplemented with a Letter of Authorization issued by the State, for the purpose of authorizing additional improvements to the lease premises during the term of this lease. Letters of Authorization shall be cumulative and become addenda to Exhibit 3 when determining the sum of all authorized improvements.

**3.02 Cropping Improvements.** Those agricultural practices performed upon the Premises less than fourteen (14) months before the expiration date of this lease, such as summer fallow, fertilization and seeding, which are normal in the locality, will be considered as authorized "Cropping Improvements". The State may dispose of Cropping Improvements as set forth below in Subsection 3.03, or proceed with leasing the entire tract at public auction while reserving for Lessee the right to harvest (Harvest Right) those areas on which Cropping Improvements exist. Said Harvest Right must be exercised within, and in no case later than, fourteen (14) months after expiration or termination of this lease, and is subject to payment of rent for the area covered by the Harvest Right under the terms of this lease as identified hereinabove in Subsection 1.04 for the area covered by the Harvest Right. Said Harvest Right shall terminate fourteen (14) months after expiration or non-default termination of the lease at which time any remaining crops shall become the property of State without compensation to Lessee.



**3.03 Disposition of Authorized Improvements.** Upon the expiration or earlier non-default termination of this lease, all improvements shall belong to State as provided in RCW 79.13.050 without compensation to Lessee, except for those authorized improvements set forth in Exhibit 3 and all subsequent Letters of Authorization which are identified within those exhibits as remaining in Lessee's ownership after expiration of the lease; provided, however, all improvements set forth on Exhibit 3 and all subsequent Letters of Authorization and all crops shall be forfeited and become the property of State upon cancellation of this lease for default.

If Lessee has been authorized by this lease to retain ownership of improvements beyond the expiration of this lease and Lessee is not issued a new lease at expiration, State will elect one of the following options:

- (a) State shall purchase such improvements;
- (b) State shall offer the premises and all improvements for lease or sale at public auction; or,
- (c) Lessee shall remove such improvements within, and in no case later than, sixty (60) days after expiration of the lease, provided that any improvements remaining thereafter shall belong to State.

If the value of improvements to remain the property of Lessee is not set forth in Exhibit 3A and agreement cannot be reached between State and Lessee on the value of such improvements in order for State to exercise option (a) or (b) in the preceding paragraph, a review board of appraisers consisting of three (3) individuals will be formed to determine the fair market value of the improvement as defined in RCW 79.13.160. These individuals must have expertise in the fields of agriculture germane to the permitted use of the Premises to serve on this review board. Per RCW 79.13.160, said review board shall be made up of one (1) member appointed by State, whose expenses shall be borne by State, one (1) member appointed by Lessee, whose expenses shall be borne by Lessee, and one (1) member to be appointed by the two aforementioned members, whose expenses shall be shared equally by Lessee and State. The majority decision of the review board shall determine the value of such improvements; and, the review board shall report its findings to State and Lessee.

The review board of appraisers shall determine the value of the improvements, by owner, and the value of the land; and, state the distinct values which, when added together, constitute the traditional fair market value of the assets.

Under option (b) above, State shall, upon determination of the value of the improvements, offer the Premises for lease or sale at public auction, with improvements. The value of such improvements shall be collected at the time of public auction and the money so collected shall be remitted to Lessee, less any damages or waste to the property or State-owned improvements

committed by Lessee and other obligations due from the Lessee. Lessee shall execute a bill of sale or other instrument requested by State showing transfer of title to the improvements immediately upon State's request following the determination of value and prior to transfer of funds due Lessee for the improvements as set forth herein.

In the event the Premises are not leased and improvements are not sold following public auction, then Lessee shall have sixty (60) days to remove the authorized improvements, after which time all improvements remaining on the Premises shall belong to State.

**3.05 Surety Bond.** At State's request, Lessee shall obtain a surety bond, cash deposit, certificate of deposit, savings account assignment, performance bond issued by a company acceptable to State, or letter of credit, in an amount established by State, to guarantee payment of damages and performance of all provisions or obligations of Lessee under this Lease, including completion of construction, development, rehabilitation, or removal of any improvements, costing over \$2,500. The surety shall be deposited with State and shall remain in effect until the site reclamation is complete, all costs have been paid in full, and the Premises are free from all liens and claims of contractors, subcontractors, mechanics, laborers, and materialmen.

**3.06 State's Repairs.** The State shall not be required or obligated to make any repairs, alterations, maintenance, replacements, or repairs in, on, or about the Premises, or any part thereof, during the term of this Lease.

**3.07 Lessee's Repairs, Alteration, and Maintenance.** With respect to Lessee's use of the Premises, Lessee shall, at its sole cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto (regardless of ownership) in good order and repair and safe condition for the safe conduct of any activities or enterprises conducted on the Premises pursuant to this Lease, and keep and maintain the Premises, including all improvements in a clean, sanitary and attractive condition.

## Section 4 Default and Remedies

**4.01 Nonwaiver.** Waiver by State of strict performance of any provision of this Lease shall not be a waiver of, nor prejudice State's right to require, strict performance of the same provision in the future or of any other provision. State's acceptance of performance, rent, or any other sum owing, following a breach by Lessee of any provision of this Lease shall not constitute a waiver of any right of State with respect to such breach. State may be deemed to have waived any right hereunder only if State has expressly done so in writing.

**4.02 Attorneys' Fees.** If either party brings suit or submits to an alternative dispute process to interpret or enforce any provision of the agreement, the substantially prevailing party shall be entitled to reasonable attorneys' fees, costs, and expenses actually incurred in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

**4.03 Notices, Payments, and Submittals.** Any notice, payment, or submittal given under this lease shall be deemed as received: upon delivery by hand; five (5) days after deposit in the United States mail with first-class postage affixed and sent to the addresses listed below; or, when sent by email, on the next business day. Changes of address shall immediately be given in accordance with this subsection. All payments required under this lease shall be submitted to State at its Division office. Any notice or submittal given under this lease shall be sent to State at its Region Office.

Send payment to Division Office:  
Department of Natural Resources  
Financial Management Division  
PO Box 47041  
Olympia, WA 98504-7041

Send notice and/or submittals to Region Office:  
Department of Natural Resources  
Northeast Region  
225 S Silke Road  
Colville, WA 99114  
northeast.region@dnr.wa.gov

To Lessee: At the address affixed with Lessee's signature or Lessee's last known address.

**4.04 Liens.** State may file and maintain during the term of this lease landlord or crop liens in order to secure any payment or obligation under this lease. Lessee shall not suffer or permit any lien to be filed against State's interest in the Premises, or improvements or crops growing thereon, by reason of work, labor, or services, performed by or through, or materials supplied to, Lessee. If any such lien is filed, Lessee shall immediately cause the lien to be discharged of record, but in no case later than thirty (30) days after the date of filing or creation of such lien unless other arrangements are approved in writing by State in advance.

**4.05 Default.** If Lessee breaches any requirement of this lease, whether material or not, State may terminate this lease after Lessee has been given thirty (30) days' notice of the breach and such breach has not been corrected within that time. If Lessee has more than one breach during the term of this lease, whether of the same or different lease requirements and whether the breach is material or not, State may terminate this lease without regard to whether Lessee cured or cures the breaches within the thirty-day cure period. With or without terminating the lease, State may seek damages for any and all defaults and reenter Premises and take whatever action may be necessary or advisable to relet, protect, or preserve Premises. State may store any property it removes from Premises in a public warehouse or other suitable place or otherwise dispose of the property, at State's discretion, at the expense and for the account of Lessee. State shall not be responsible for any damages or losses suffered by Lessee as a result of such reentry, removal, storage, or other disposition, and none of this action shall be construed as an election to terminate this lease unless a written notice of termination is given to Lessee. The remedies provided for in this lease shall not be exclusive but are in addition to all other remedies available by law.

**4.06 Non-Default Termination.** In response to a written request from Lessee asking to surrender the leasehold, State may terminate all or part of this Lease upon satisfaction by Lessee of all outstanding rents, duties, and obligations. The State may condition the surrender upon Lessee's acknowledgement of the continuation of any obligations that survive termination of this Lease pursuant to Section 4.07.

This Lease, or any portion thereof, is also subject to termination on one hundred eighty (180) days' written notice if State includes the Premises in a plan for higher and better use, land exchange, or sale. State will provide written documentation along with the notice, demonstrating that the State has included the leased land in a plan for higher use, land exchange or sale. The Lessee will be allowed to use the Premises for the remainder of the current grazing season for grazing purposes and/or for the remainder of the farming season to harvest any permitted crop, subject to the permitted use(s) set forth in Subsection 1.04. State will compensate Lessee as provided under RCW 79.13.420, as may be amended or recodified during the term of this lease. State's compensation of Lessee shall be Lessee's sole financial remedy based on State's early termination for a higher and better use, land exchange, or sale.

**4.07 Survival.** All obligations of Lessee to be performed prior to the expiration or earlier termination shall not cease upon the termination or expiration of this Lease, and shall continue as obligations until fully performed. All clauses of this Lease which require performance beyond the termination or expiration date, including but not limited to Section 2.02 and 5.06, shall survive the termination or expiration date of this Lease. However, upon expiration or earlier termination of this Lease, the rights of Lessee and of all persons, firms, corporations, and entities claiming under Lessee in and to the Premises and all improvements thereon, unless specified otherwise in this Lease, shall cease.

**4.08 State's Right to Cure Defaults.** If Lessee fails to perform and is in default of any undertaking or promise contained herein, including those set forth in any plan of development, State shall have the option, but is not obligated, to make such performance after giving ten (10) days written notice to Lessee. The State's costs and expense to correct Lessee's failure to perform shall be reimbursed by Lessee and shall be immediately due and payable, together with interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the commencement date hereof), until paid, accruing from the date such cost or expense is incurred.

**4.09 Remedies Cumulative.** The specified remedies to which State may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which State may lawfully be entitled in case of any breach or threatened breach by Lessee of any provision of this Lease.

**4.10 Force Majeure.** The Lessee's failure to comply with or delayed compliance with any of the obligations under this Lease shall be excused only if due to causes entirely beyond Lessee's control and without the fault or negligence of Lessee, including riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God. The performance of Lessee's obligations under the Lease shall be excused only for the period of delay and the time period for performance shall be extended by the same number of days in the period of delay.

## Section 5 General Provisions

**5.01 Right to Inspect.** State may at any time enter and inspect the Premises and improvements constructed thereon. In addition, Lessee shall allow State's employees access to buildings and facilities during regular business hours of Lessee's operations or at other times as may be requested by State.

**5.02 Access.** The State reserves the right to grant easements to others and build roads on the Premises. Lessee may not construct new roads or undertake any modification or alteration to existing roads without the prior written consent of State.

**5.03 Uses.** The State reserves the right to lease the Premises for other uses which are compatible with Lessee's permitted use(s) set forth in Section 1, provided State notifies subsequent lessees of the existence of this lease prior to entering any subsequent lease and any future lease requires all future lessees to avoid any substantial interference with Lessee's use of the Premises. State further reserves the right to sell, lease, or otherwise dispose of minerals, coal, oil, gas, gravel, stone, forestry resources or other valuable materials in a manner consistent with Lessee's right to use the Premises for its permitted use(s) set forth in Section 1. Lessee's obligations under this lease shall not increase as a result of any subsequent lease except that Lessee shall be required to notify State of any interference with Lessee's permitted use(s). Lessee's Plan of Development and placement of improvements must be such that State's adjacent ownership, if any, will not be impaired.

**5.04 Public Hunting, Fishing and Nonconsumptive Wildlife Activities.** The Premises shall be open and available to the public for purposes of hunting, fishing, and nonconsumptive wildlife and other activities, unless closed to public entry because of fire hazard or a closure is authorized in writing by State, as provided in RCW 79.10.125. When closure is authorized by State, Lessee shall post the Premises with approved signs to inform the public of such closure. Lessee is not required to post signs when the closure is for fire hazard.

**5.05 Indemnity.** To the fullest extent permitted by law, Lessee shall indemnify, defend, and hold harmless State, agencies of State, and all officials, agents, and employees of State, from and against any and all claims, including claims by Lessee's employees, agents, and contractors, arising out of or resulting from any act or omission of Lessee, or its agents, employees, and contractors, while operating under this lease or at the Premises. "Claims" as used in this subsection means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Lessee's obligation to indemnify, defend, and hold harmless State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees, and officials. Lessee waives its immunity under Title 51 to the extent it is required to indemnify, defend, and hold harmless State and its agencies, officials, agents, or employees.

## 5.06 Insurance.

- (a) Lessee shall at all times during the term of the lease, at its expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance is a breach of this lease. All insurance and surety bonds should be issued by companies admitted to do business within the State of

Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. If an insurer is not so admitted, all insurance policies and procedures for issuing the insurance policies must comply with RCW 48.15 and WAC 284-15.

Before starting work under this lease, Lessee shall, at State's request, furnish State at its Region Office with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements under this lease.

State shall be provided written notice before cancellation or non-renewal of any insurance referred to in the certificate(s), in accordance with the following specifications:

- (1) Insurers subject to RCW 48.18 (Admitted and Regulated by the Insurance Commissioner): The insurer shall give forty-five (45) days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, State shall be given ten (10) days advance notice of cancellation.
- (2) Insurers subject to RCW 48.15 (Surplus lines): The State shall be given twenty (20) days advance notice of cancellation. If cancellation is due to non-payment of premium, State shall be given ten (10) days advance notice of cancellation.

Sublessee(s) must comply fully with all insurance requirements stated herein. Lessee shall include all sublessee(s) as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each sublessee. Failure of sublessee(s) to comply with insurance requirements does not limit Lessee's liability or responsibility. State, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this lease shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State. Lessee waives all

rights against State for recovery of damages to the extent those damages are covered by general liability or umbrella insurance maintained pursuant to this lease. If Lessee is self-insured, evidence of its self-insured status shall be provided to State, and upon receipt by State, shall be automatically incorporated into this lease. If requested by State, Lessee shall describe its financial condition and the self-insured funding mechanism. By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Lessee. Such coverage and limits shall not limit Lessee's liability under the indemnities and reimbursements granted to State in this lease.

The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

Commercial General Liability Insurance.

<b>Description</b>	<b>Commercial General Liability (CGL) Insurance</b>
General Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000

Lessee shall maintain commercial general liability ("CGL") insurance and, if necessary, commercial umbrella insurance, with a limit of not less than the amounts listed above per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on Insurance Service Office ("ISO") occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of Premises, operations, fire liability, independent contractors, sublessees, products-completed operations, personal injury, and advertising injury and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insureds (cross liability) condition.

Employer's Liability Insurance and Workers' Compensation Insurance. Lessee shall buy employer's liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. Lessee shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Lessee and employees of any sublessees. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this lease. Except as prohibited by law, Lessee waives all rights of subrogation against State for recovery of damages to

the extent they are covered by workers' compensation, employer's liability, commercial general liability or commercial umbrella liability insurance. If Lessee or sublessee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Lessee shall indemnify State. Indemnity shall include all fines, payment of benefits to Lessee, sublessees, and employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such.

Business Auto Policy. Lessee shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance, with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto". Business auto coverage shall be written on ISO form CA 00 01 or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01. Lessee waives all rights against State for the recovery of damages to the extent they are covered by business auto liability insurance or commercial umbrella liability insurance.

- (b) In the event of any loss, damage or casualty which is covered by one or more of the types of insurance described herein, the parties to this lease shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which shall be held in trust by State, including interest earned by State on such proceeds, for use according to the terms of this lease. The parties agree that such insurance proceeds shall be used to repair and restore damaged improvements to their former condition and usefulness or replacement of the same with equivalent or more suitable improvements.

When sufficient funds are available, using insurance proceeds described above, the parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all necessary work to:

- (1) Repair and restore damaged building(s) and/or improvements to their former condition, or
- (2) Replace said building(s) and/or improvements with a new building(s) and/or improvements on Premises of a quality and usefulness at least equivalent to, or more suitable than, damaged building(s) and/or improvements.

#### **5.07 Records and Audits.**

- (a) Lessee shall prepare, maintain, and keep records in accordance with applicable law and prudent business practices. A clear, complete, detailed record and



accounting of business of every kind and character affecting payment due State and crop production, shall be maintained at a location in Washington, for a period of at least seven (7) years following:

- (1) each harvest;
  - (2) payment of rent; or,
  - (3) the date accounting is provided to State, whichever is later.
- (b) The acceptance by State of any payment under Section 1 herein shall be without prejudice to State's right to examine Lessee's books and records to verify the amount of crops and/or proceeds received by Lessee from the Premises. Lessee shall authorize and permit State or its agents to examine any and all books, records and files of all kinds for the use of State for the purpose of determining and enforcing compliance with the provisions of this Lease.

**5.08 Harvest Reports.** Lessee shall, as soon as possible, furnish harvest reports to State at the Division Office in Olympia, but no later than thirty (30) days after final date of harvest of all crops.

Harvest reports shall include the planted acreage and variety of crops harvested, quantity, the grades if known, the field number, circle number, block number, or location of each crop grown and the place of storage, processing or other disposition of the crops.

**5.09 Conservation Plan.** Fifteen (15) days prior to disturbing any vegetation or soil to cultivate any previously uncultivated land on the Premises, Lessee shall furnish State with a copy of a conservation plan approved by the Natural Resource Conservation Service (NRCS). The plan shall be partial fulfillment of the requirements set forth in Subsection 2.01(1).

**5.11 Sublease and Assignment.** Lessee shall not sublease the Premises in whole or in part without prior written approval of State. Lessee shall obtain sublessee's agreement to be bound by the terms and conditions of this Lease and any amended terms. Lessee shall remain fully liable for its obligations under this Lease, including but not limited to payment of rent and other sums due in accordance with the terms of this Lease.

State may assign this Lease at State's option. Lessee shall not assign, hypothecate, mortgage, encumber, transfer, or otherwise alienate this Lease or any interest therein, or engage in any other transaction which has the effect of transferring or affecting the rights of enjoyment of the Premises without prior written approval of State. Each permitted assignee or transferee of Lessee shall assume all obligations under this Lease occurring after the date of assignment, including any amended terms. Lessee shall remain liable for any obligations occurring prior to the date of assignment. Lessee shall be jointly and severally liable with the assignee or transferee for all obligations under this Lease occurring after the date of assignment with respect to those

obligations that exist as of the date of assignment unless released in writing by State. State at its option may release Lessee from all but those terms and conditions of this Lease that survive termination of this Lease. Unless released in writing, Lessee's obligations shall continue in full force and effect until the Termination Date. State may require reimbursement for any additional administrative costs resulting from the assignment.

State's approval of a sublease or an assignment shall not constitute a waiver of State's right to approve or disapprove subsequent subleases or assignments. State's acceptance of payment or performance shall not constitute consent to any sublease or assignment and State's approval shall be evidenced only by writing.

**5.12 Name Change.** If during the term of this Lease Lessee changes its name, Lessee shall provide State with documentation legally supporting the name change within sixty (60) days of the effective date of the change. Lessee may contact State's Northeast Region office in Colville (identified in Subsection 4.03) for a list of acceptable documentation.

**5.13 No Partnership.** The State is not a partner nor a joint venturer with Lessee in connection with the activities conducted and business carried on under this Lease, and State shall have no obligation with respect to Lessee's debts or other liabilities.

**5.14 Lessee's Authority.** Persons executing this Lease on behalf of Lessee represent that they are authorized to do so and represent and warrant that this Lease is a legal, valid, and binding obligation on behalf of Lessee, and is enforceable in accordance with its terms.

**5.15 State's Authority.** This Lease is entered into by State pursuant to the authority granted by statute and the Constitution of State of Washington. The terms and conditions hereof are subject to such statutory and constitutional provisions as may be now in effect and such provisions which do not impair the contractual rights of Lessee under this Lease which may lawfully be enacted subsequent to the date of this Lease.

**5.16 Preservation of Markers.** Any legal land subdivision survey corners, reference points or monuments are to be preserved. If such are destroyed or disturbed, they shall be re-established by a licensed land surveyor in accordance with U.S. General Land Office standards at Lessee's expense. Corners and/or reference points or monuments that must necessarily be disturbed or destroyed in the process of carrying out the operations allowed by this Lease must be adequately referenced and/or replaced in accordance with Chapter 58.09 RCW. Such references and replacements must be approved in writing by State prior to removal of said corners, reference points or monuments.

**5.17 Condemnation.** In the event that State is unable to successfully contest the authority of any entity seeking to condemn the Premises and if the entirety of the Premises are taken by proper exercise of the power of eminent domain, this Lease shall terminate as of the date possession was taken by said public authority pursuant to such condemnation. If any part of the Premises is so taken and, in the opinion of either State or Lessee, it is not economically feasible

to continue this Lease, either party may terminate the lease. Such termination by either party shall be made by notice to the other party given not later than thirty (30) days after possession is so taken, the termination to be effective as of the later of thirty (30) days after said notice or the date possession is so taken. If part of the Premises is so taken and neither State nor Lessee elects to terminate this Lease, or until termination is effective, as the case may be, the payment due under this Lease shall be abated in the same proportion as the portion of the Premises so taken bears to the whole of the Premises. All damages awarded for the taking or damaging of all or any part of the Premises, or State-owned improvements thereon, shall belong to and become the property of State, and Lessee hereby disclaims and assigns to State any and all claims to such award, provided, however, that State will not claim any interest in any award for personal property or authorized improvements belonging to Lessee as set forth in Section 3 and State will not claim a share of any award made to Lessee for interruption of or damage to Lessee's business or for moving expenses. The State may share in the value of crops in accordance with the crop division and/or additional payment set forth in Section 1.07.

**5.18 Interpretation and Numbering.** This Lease has been submitted to the scrutiny of all parties hereto and each party has been given the opportunity to consult with legal counsel. This Lease shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight given to it being drafted by any party hereto or their counsel. Section and subsection numbers, headings, or titles are for convenience only and are not to be construed to limit or to extend the meaning of any part of this Lease.

Section and subsection numbers may be omitted or out of sequence because of inclusion or exclusion of sections or subsections in this Lease at the option of State. Cross references to sections or subsections that are not included in this Lease should not be construed as material references.

**5.19 Time of Essence.** Time is expressly declared to be of the essence of this Lease and each and every covenant of Lessee hereunder. In the event time for performance falls on a weekend or legal holiday designated by the United States or Washington State, performance shall be deemed to be timely rendered if so rendered on the next business day.

**5.20 Lease Changes and Additions.** Any changes or additions to this Lease or the attached exhibits shall be made in writing, executed by the parties hereto, and neither State nor Lessee shall be bound by verbal or implied agreements.

**5.21 Entire Agreement.** This written lease or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

**5.22 Invalidity.** If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent prove to be invalid, unenforceable, void, or illegal, the remainder of this Lease, or the application of such term or provision to persons or circumstances

other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and be enforced as written to the fullest extent permitted by law.

**5.23 Discrimination.** The Lessee shall not conduct or suffer any business upon the Premises which unlawfully discriminates against any person on the basis of race, color, creed, religion, sex, age, or physical or mental disability or which otherwise violates applicable civil rights and antidiscrimination requirements, including but not limited to RCW 49.60.

**5.24 Access to Livestock During Wildfire.** State shall make every reasonable effort to accommodate Lessee's request to retrieve or care for livestock legally on the Premises that are at risk due to wildfire. State may prohibit Lessee and Lessee's employees or agents from retrieving or caring for livestock legally on the Premises during any fire suppression response if reasonably necessary to prevent interference with a direct, active fire response. Lessee assumes full liability for any damages incurred to Lessee and Lessee's employees and agents in Lessee's charge related to Lessee's and Lessee's employees' and agents' efforts to retrieve or care for livestock during the time of a fire suppression response by the State affecting the Premises. The State of Washington, the Department of Natural Resources, and other political subdivisions of the state shall not be liable for any direct or indirect adverse impacts, including injury or death, resulting from State's reasonable efforts to accommodate Lessee's or Lessee's employees' or agents' retrieval or care for animals or Lessee's or Lessee's employees or agents accessing the Premises to retrieve or care for livestock during the time of a fire suppression response by State affecting the Premises. State does not guarantee access if restricted by other agencies or jurisdictions involved with fire suppression response.

**5.25 Proprietary Information/Public Disclosure.** Materials or information submitted as required in this Lease shall become public records within the meaning of RCW Chapter 42.56.

Any submitted materials or information that Lessee claims as exempt from disclosure under the provisions of RCW 42.56 must be clearly designated. The page must be identified and the particular exemption from disclosure upon which Lessee is making the claim must be identified by the RCW citation number.

The State will consider a Lessee's request for exemption from disclosure; however, State will make an independent decision on the applicability of any claimed exemption consistent with applicable laws. The portion of a document claimed as exempt must qualify for exempt status as identified in RCW 42.56. Marking the entire submitted materials or information exempt from disclosure cannot be honored. If a public records request is made regarding materials that Lessee has requested as exempt, the affected Lessee will be given notice of the request and allowed ten business days, or the time allowable by law, whichever is less, to seek a court injunction against the requested disclosure prior to State fulfilling the public records request.

**5.26 Exhibits.** Exhibits referenced herein, including those which may be added during the term of this Lease, are incorporated herein by reference and are to be considered terms of this Lease.

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ TBA

Address:

Phone:



**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES**

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ KYLE POMRANKEY

State Lands Assistant Region Manager  
Northeast Region

Approved as to form  
November 15, 2021  
by Adrienne Smith,  
Senior Counsel  
Office of the Attorney General





**EXHIBIT 1**  
**Encumbrances**

Subject to easement for right of way for county road heretofore granted under Application No. 50-CR1069, for an indefinite term.



## **EXHIBIT 2**

### Contents:

Exhibit 2A for: Resource Management Plan;

Exhibit 2F for: Map of Premises;

## EXHIBIT 2A RESOURCE MANAGEMENT PLAN

The resource management section describes the management objectives and practices agreed upon by State and Lessee to manage agricultural and grazing production on Washington's trust lands. If the management requirements cannot be followed due to any climatic variations, unforeseen events, or other land management activities that lead to changes from agreed upon resource management, Lessee must obtain authorization from State regarding any proposed changes prior to implementation.

### CROPLAND MANAGEMENT

**Composite Erosion Rate:** The Lessee shall maintain or improve the soil profile by applying farming practices that reduce sheet, rill and wind erosion. The composite erosion rate for the crop rotation shall not exceed the soil loss tolerance "T": the amount of topsoil that can be replaced naturally in a year on the soil mapping unit found on the leased premises.

**Soil Additions and Pesticides:** Organic and inorganic substances shall be applied to meet plant requirements. Application methods utilized shall aid in the prevention of substances moving into water bodies, leaching into ground water, or building excessive residual levels in the soil profile. This will be accomplished through following all federal, state and local laws, and as prescribed by label.

The Lessee shall have and follow an Integrated Pest Management ("IPM") plan. This means utilizing a coordinated decision-making and action process that considers all pest management methods and strategies, and applies them in an environmentally and economically sound manner to meet pest management objectives. The elements of integrated pest management include:

- (a) Preventing pest problems;
- (b) Monitoring for the presence of pests and pest damage;
- (c) Establishing the density of the pest population (which may be zero) that can be tolerated;
- (d) Treating pest problems to reduce their populations below the tolerable threshold, using strategies that may include biological, cultural, mechanical, and chemical control methods, and that consider human health, ecological impact, feasibility and cost-effectiveness; and
- (e) Evaluating the effects and efficacy of pest treatments.

**Mass Soil Movement and Gully Erosion:** Lessee shall apply farming practices that limit the potential for mass soil movement and gully erosion.

## **WEED MANAGEMENT**

**Weed Control:** Lessee shall control all noxious weeds on all lands under this lease consistent with applicable laws. Lessee shall be responsible for, and shall reimburse State for, any noxious weed control costs incurred as a result of Lessee's failure to control.

The Lessee shall use IPM to control weeds. This means using a coordinated decision-making and action process that considers all weed management methods and strategies, and applies them in an environmentally and economically sound manner to meet weed management objectives. The elements of integrated pest management for weeds include:

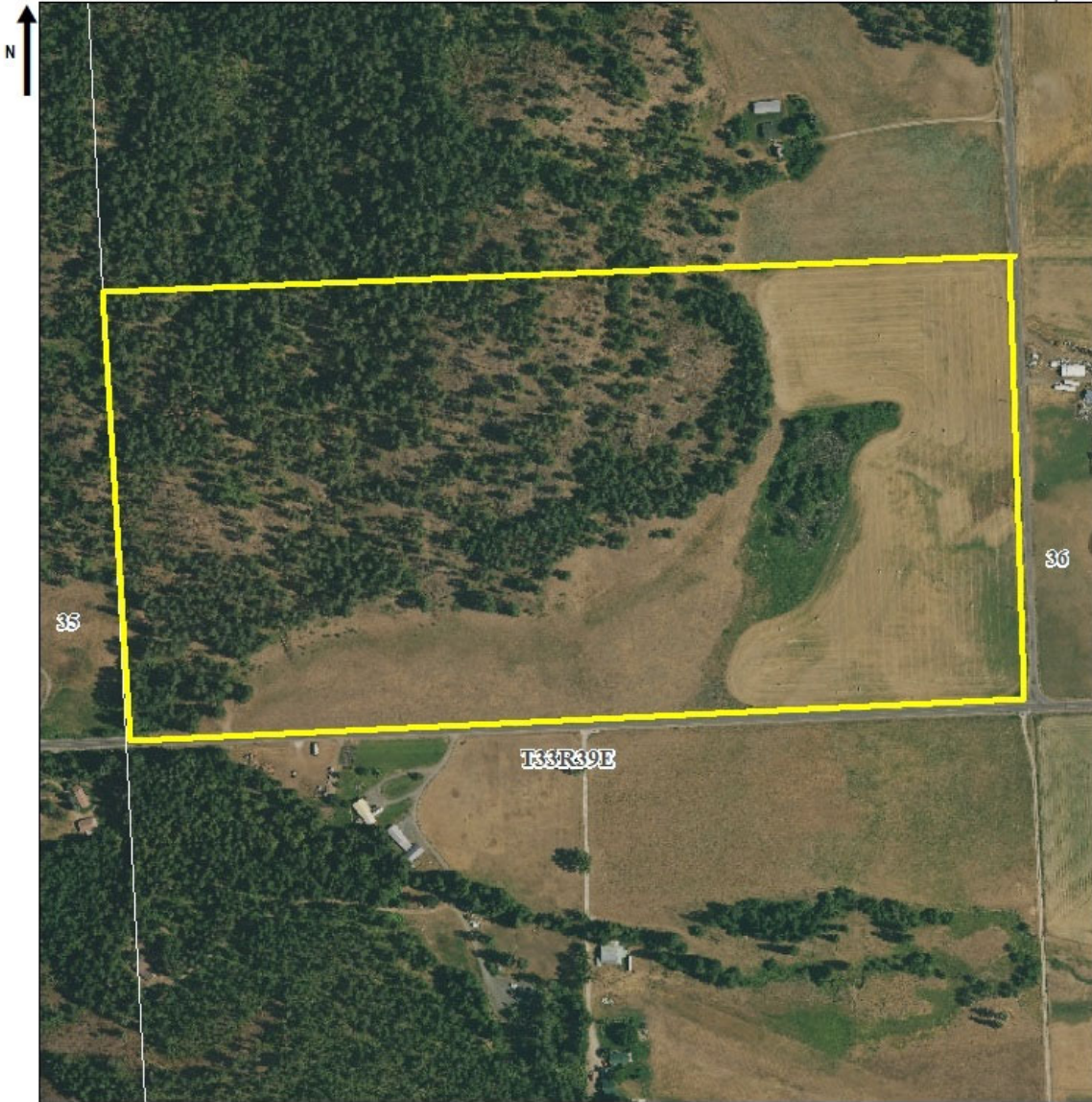
- (a) Preventing weed problems;
- (b) Monitoring for the presence of weed species;
- (c) Establishing the density of the weed population (which may be zero) that can be tolerated;
- (d) Treating weed problems to reduce their populations below the tolerable threshold, using strategies that may include biological, cultural, mechanical, and chemical control methods, and that consider human health, ecological impact, feasibility and cost-effectiveness; and
- (e) Evaluating the effects and efficacy of weed control treatments.

**EXHIBIT 2F  
Map of Premises**


**Map of Premises**

Lease 12-106440

2021 Orthophoto



0 0.020.04 0.08 0.12 0.16 Miles

 DNR

**EXHIBIT 3A**  
**Authorized Improvements**

As of the Commencement Date of this lease, there are no authorized improvements on the Premises.