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WHEN RECORDED RETURN TO:)
The Nature Conservancy)
Washington Field Office)
217 Pine Street, Suite 1101)
Seattle, Washington 98101)
ATT: Steven Karbowski, Division Counsel)

Real Estate Excise Tax
Exempt

Kittitas County Treasurer

By *S. JOHNSON*

12-28-01
AMT 87220
33-

DEED OF CONSERVATION EASEMENT
(Portion of Swauk Valley Ranch, Kittitas County, Washington)

Grantor: Swauk Valley Ranch, LLC

Grantee: The Nature Conservancy

Legal Description

Abbreviated form:

Section 8, Township 19 North, Range 17 East, W.M.: E 1/2 NE 1/4; E 1/2 SE 1/4; W 1/2
E 1/2 and E 1/2 W 1/2

Section 17, Township 19 North, Range 17 East, W.M.: SE 1/4 and E 1/2 NE 1/4
Additional legal at Exhibit A.

Assessor's Tax Parcel Numbers:

19-17-0800-0003; 19-17-0800-0004; 19-17-0800-0005; 19-17-0820-0002;
19-17-1700-0001



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THIS DEED OF CONSERVATION EASEMENT (the "Easement") is made this 21st day of December, 2001 by and between SWAUK VALLEY RANCH LLC, a Washington limited liability company, whose address is P.O. Box 24567, Seattle, Washington, 98124 (the "Grantor") and THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, whose principal address is 4245 North Fairfax Drive, Suite 100, Arlington, Virginia, 22203-1606 (the "Conservancy").

Exhibits to this Deed of Conservation Easement include the following:

Exhibit A - Legal Description of the Property

Exhibit B - Map of the Property

Exhibit C - Acknowledgment of Easement Documentation Report

RECITALS:

A. Grantor is the owner of certain real property in Kittitas County, Washington, consisting of 731 acres, more or less, more particularly described and shown in Exhibits A and B attached hereto and incorporated herein by this reference (the "Property"). The Property is a portion of a much larger ranch owned by Grantor.

B. The Property currently remains in a substantially undisturbed, natural state and has significant ecological and open-space values as defined in Washington's conservation easement statute, Section 64.04.130, and provides significant natural habitat for native plants and wildlife. The natural elements found on the Property of particular significance are described in more detail in the Easement Documentation Report described in Section 2 herein and summarized as follows:

1. Swauk Creek, which flows through the Property, is a remarkably pristine creek largely unconstrained in its floodplain by rip-rap, roads, bridges, dams or other structures;
2. The surrounding terrestrial landscape, composed of shrub-steppe (containing bitterbrush, serviceberry, snowberry and other shrubs), native woodlands (containing ponderosa pine, Douglas fir, garry oak and other trees), and other native plant communities, is largely intact and unfragmented by extensive road systems, subdivisions, agricultural fields, or other disruptive land uses; and
3. The natural features identified in paragraphs 1 and 2 above are part of a dynamic landscape that also includes essential natural processes (such as flooding, windthrow, predation and others).



Together, these natural elements comprise a healthy, functional ecosystem.

C. Protection of the Property will contribute to the ecological integrity of the lower Swauk Creek valley and conserve significant natural habitat for wildlife and plants. In particular, this Easement will:

1. Protect Swauk Creek and its riparian habitats, including the plants, fish, invertebrates, and other wildlife that inhabit or use these habitats, as well as the ecological processes (e.g., hydrological regime, and surface and subsurface flows) that maintain this ecosystem in proper functioning condition; and
2. Protect the largely undisturbed and wild character of the surrounding terrestrial landscape of the Swauk Creek ecosystem, which is inextricably linked to the creek and riparian areas.

D. All of these natural elements and ecological and open-space values are of great importance to Grantor and to the people of the State of Washington, and are worthy of preservation.

E. Grantor, as owner of the Property, owns the affirmative rights to identify, preserve, and protect in perpetuity its open space character and its significant natural features and values.

F. Grantor desires and intends to transfer such rights to the Conservancy.

G. The State of Washington has recognized the importance of private efforts toward the preservation of natural systems in the state by enactment of Washington's conservation easement statute, Section 64.04.130.

H. The Conservancy is a private organization organized to protect and conserve natural areas and ecologically significant land for scientific, charitable and educational purposes, and is a "holder" under the terms of Section 64.04.130 of the Washington Code and is a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code of 1986, as amended (the "IRS Code"), qualified to acquire and hold conservation easements and meets the requirements of the IRS Code as a Section 501(c)(3) exempt organization.

TERMS AND CONDITIONS

NOW, THEREFORE, for the reasons stated above, and in consideration of the mutual covenants contained herein, pursuant to Washington's conservation easement statute, Section 64.04.130, Grantor hereby conveys and warrants to the Conservancy, its successors



and assigns, a perpetual Conservation Easement consisting of the rights and restrictions enumerated herein, over and across the Property together with all unreserved development rights associated with the Property (the "Easement"). This conveyance is made as an absolute, unconditional, unqualified, and completed gift, subject only to title matters of record and the mutual covenants, terms, conditions and restrictions contained herein, and for no other consideration whatsoever.

1. Purposes. The general purpose of this Easement is to implement the mutual intentions of Grantor and the Conservancy as expressed in the above Recitals, which are incorporated herein by reference, and in the provisions that follow, to preserve and protect in perpetuity and, in the event of their degradation or destruction, to enhance and restore the open space and significant ecological features of the Property. It is further the specific purpose of this Easement to conserve important habitat for wildlife, fish and other aquatic species; to protect rare or unique native plants currently known or later identified; and to conserve the diverse forest, meadow, riparian and aquatic vegetative communities and the wildlife, fish and other aquatic species inhabiting these communities. Grantor and the Conservancy intend to achieve these purposes through the prevention of any uses of or activities on the Property that will impair or interfere with the significant ecological and open-space values of the Property. Grantor and the Conservancy intend that this Easement will confine the use of the Property to such activities, including, without limitation, those involving range and forestry uses, as are small in size and scale and severity of impacts and may be conducted consistent with the conservation values protected herein and in a manner that minimizes disturbance to native vegetation, minimizing disruptions of wildlife, reduces threats from invasive weeds, and avoids soil disturbance that creates slope instability and sediment run-off.

Pursuant to the terms of Washington's conservation easement statute, Section 64.04.130, the Property preserved hereby as natural land may not be converted or directed to any uses other than those provided herein.

2. Easement Documentation Report. Competent naturalists familiar with the Property have prepared a collection of baseline data on the Property and its resources. The data and explanatory text are presented in the "Swauk Valley Ranch Easement Documentation Report" dated December 21, 2001 (the "Report"). A copy of the Report is on file with both Grantor and the Conservancy and by this reference made a part hereof. The parties acknowledge that the Report is intended to establish the condition of the Property subject to the Easement as of the date written above and that both Grantor and the Conservancy have acknowledged in a signed statement, a copy of which is attached hereto as Exhibit C, that the Report accurately represents the currently available baseline data regarding the condition of the Property at the time of conveyance, particularly with respect to the location and condition of all existing roads, culverts, fences and structures. The Conservancy and Grantor further agree that within eight (8) months of the execution of this Easement, the Conservancy may collect additional baseline data and prepare a supplemental report (the "Supplemental Report"), and, if approved



by Grantor in writing as an accurate representation of the Property (which shall not be unreasonably denied); shall be incorporated into the Report and the Easement by this reference. Failure to timely compile a Supplemental Report shall not affect the enforceability of this Easement or any of its provisions.

The parties agree that, in the event a controversy arises with respect to the nature and extent of the biological or physical condition of the Property, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other information to assist in the resolution of the controversy.

3. Rights of the Conservancy. The rights conveyed to the Conservancy by the Easement are the following:

A. To identify, to preserve and protect in perpetuity, and in the event of their degradation or destruction to restore or, if such degradation or destruction is the result of violation(s) of the Easement, to enforce the restoration of the open space and significant ecological features and values of the Property.

B. To perform such activities on the Property as the Conservancy and Grantor reasonably determine are necessary or convenient to carry out these rights granted by this Easement, including, without limitation, the construction of fencing.

C. To enter upon the Property to enforce the rights herein granted, to study and make scientific observations of its ecosystems, and to determine that Grantor's activities are in compliance with the terms of the Easement, all upon prior reasonable notice to Grantor, at times mutually agreeable to Grantor and the Conservancy, and in a manner that does not unreasonably disturb the use and quiet enjoyment of the Property by Grantor consistent with the Easement. The Conservancy shall also have the right of immediate entry to the Property if, in its sole judgment, such entry is necessary to prevent damage to or the destruction of the conservation values protected by the Easement.

D. To enjoin any activity on or any use of the Property that is inconsistent with the Easement, consistent with Section 8 herein.

E. To enforce the terms of the Easement, consistent with Section 8 herein.

F. To assign, convey, or otherwise transfer the Conservancy's interest in the Property in accordance with Section 12 herein.

G. Any and all development rights now or hereafter associated with the Property, including, without limitation, all rights, however designated, that may be used



pursuant to applicable zoning laws, or other governmental laws or regulations, both now and hereafter, to compute permitted size, height, bulk, or number of structures, development density, lot yield, or any similar development variable on or pertaining to the Property or any other property, except those associated with the primitive cabin sites reserved by Grantor under Paragraph 4.A hereof. Grantor and the Conservancy agree that the development rights so conveyed are hereby terminated and extinguished and may not be used on or transferred to any other property not within the Property.

4. Consistent Uses of the Property. Grantor reserves for itself and its members and their heirs and its successors and assigns, all rights accruing from ownership of the Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Property that is not inconsistent with the purposes of this Easement and that is not prohibited by this Easement. Without limiting the generality of this paragraph, the following uses and practices by Grantor, though not an exhaustive recital of consistent uses and practices, are consistent with the Easement. Certain of these consistent uses and practices are identified as being subject to specified conditions or to the requirement of, and procedures for, prior approval by the Conservancy; procedures for prior approval are provided below. The remainder of these consistent uses shall not be precluded, prevented, or limited by the Easement.

A. Construction and use of up to four primitive and rustic cabins on the Property within the general areas outlined in Exhibit B; provided, however, that plans for all cabin locations and structures are subject to the Conservancy's prior review and consultation with Grantor under the process set forth in Paragraph 6 hereof; and provided further that no cabin structure on the Property shall exceed five hundred (500) square feet in footprint or one and a half (1½) stories in height, that no cabin structure on the Property shall involve a disturbance footprint around the cabin structure (for construction, landscaping, etc.) greater than twenty (20) feet from the outer walls of the cabin structure, that no cabin structure on the Property shall utilize utility service or utility lines outside of the disturbance footprint, and that no cabin structure on the Property shall be located within the geomorphic flood plain of Swauk Creek (as described in the Report). Cabin structures located along existing roads (as defined herein) are preferable to cabin structures located some distance from exiting roads; provided, however, that no new spur road that may be necessary for access to a cabin structure shall extend more than seventy-five (75) feet from an existing road and shall be no more than ten (10) feet in width. Exterior features shall be constructed of non-reflective material and painted or maintained with earth-tone colors found in the surrounding environment. Grantor shall in good faith consider any recommendations provided by the Conservancy as to appropriate measures for minimizing the impact of construction and use of these cabin sites on the significant natural elements found on the Property.



B. Maintenance, repair, and, in the event of destruction, reconstruction, of the cabin structures permitted in this Easement. If a structure on the Property is destroyed, Grantor may replace it in the general areas outlined in Exhibit B with a structure of similar size, function, capacity, and building materials; provided, however, that such replacement shall be subject to the same standards and review and consultation process provided for in Paragraph 4.A above.

C. Maintenance, repair, and, in the event of destruction, reconstruction of the non-impervious and unimproved roads existing on the Property as of the date written above (as described in the Report); provided, however, that such maintenance, repair and reconstruction activities shall be performed in consultation with the Conservancy and in accordance with best management practices (BMPs) that are appropriate to the low level of use of such roads contemplated by Grantor and that serve to minimize environmental damage to the Property resulting from such activities (such as sedimentation, potential slope failure and spread of invasive weeds); and provided further that such maintenance, repair and reconstruction activities shall not improve the roads through addition of asphalt paving or hardeners or other significant improvements to accommodate increased or heavier use. Grantor shall in good faith consider any recommendations provided by the Conservancy as to appropriate BMPs, such as installation of culverts where needed and addition of gravel and modest grading to minimize sedimentation and erosion problems. Plans for any new roads not existing as of the date written above (as described in the Report) are subject to the Conservancy's prior review and approval under the process set forth in Paragraph 6 hereof; provided that Grantor and the Conservancy agree that no new roads shall be within the geomorphic flood plain of Swauk Creek (as described in the Report), no new roads shall incorporate impervious surfaces (such as asphalt or the like), and no new roads shall be approved by the Conservancy without good cause shown as to their necessity. If any road existing on the Property as of the date written above (as described in the Report) or approved thereafter by the Conservancy is rendered unusable by natural causes, Grantor may replace it, subject to the Conservancy's prior review and consultation with Grantor, at the same or such nearby location as may have the least impact on the significant natural elements found of the Property.

D. Construction and maintenance of non-impervious foot trails and paths within the Property.

E. Ecologically beneficial range use of the Property (such as grazing and pasturing of horses, cattle, mules, sheep, goats and llamas) sufficient to continue classification of the Property within the farm and agricultural land classification of Kittitas County's then current use property tax assessment program. Grantor shall prepare its range, farm and agricultural plans for the Property in consultation with the Conservancy. As part of such consultation, the Conservancy may provide recommendations to Grantor



as to ecologically beneficial range use and management practices on the Property, including, without limitation, how to prevent overgrazing, how to improve range conditions, or how to develop range conditions that emulate or replicate natural disturbance regimes, which recommendations shall in good faith be considered by Grantor and acted upon by Grantor if Grantor determines in its full discretion it is possible to do so. Grantor shall exclude range animals from the geomorphic floodplain of Swauk Creek (as described in the Report) by use of fencing or other means.

F. Maintenance, repair, and, if destroyed, reconstruction of existing fencing. Construction of new fences as may be necessary to protect significant natural elements found on the Property from damage (e.g., reducing trespass along the easement boundary) are subject to the Conservancy's prior review and approval under the process set forth in Paragraph 6 hereof; provided that Grantor and the Conservancy agree that new boundary or pasture-division fences shall not unduly restrict or exclude wildlife use of the Property and agree that Grantor shall exclude range animals from the geomorphic floodplain of Swauk Creek (as described in the Report) by use of new fencing or other means.

G. Development of new ground water resources and installation of new water distribution facilities for domestic and livestock use on the Property or on contiguous property owned by Grantor; provided, however, that Grantor shall not maintain, repair, reconstruct or develop any structure on the Property for diverting surface water from Swauk Creek. Grantor shall minimize environmental damage to the Property resulting from installation, maintenance and repair activities.

H. Use of chemicals for the following purposes and under the following conditions:

i. For the control of noxious weeds, as required by Washington state law, and for the control of other invasive exotic plant species; provided that chemical herbicides may be used only in those amounts and with a frequency of application that constitute the minimum necessary for control; and that the herbicide is not applied by aerial spraying.

ii. For the control of agricultural or forest pests, subject to the Conservancy's prior review and approval under the process set forth in Paragraph 6 hereof.

I. Use of biological weed and insect control agents, subject to the Conservancy's prior review and approval under the process set forth in Paragraph 6 hereof.

- J. Reforestation and selective harvesting of timber sufficient to continue classification of the Property within the designated forest land and/or open space timber land classifications of Kittitas County's then current use property tax assessment program; provided that reforestation activities on the Property shall only utilize native tree species indigenous to the Property. Grantor shall provide a copy of any forest management land it has prepared for the Property to the Conservancy upon written request from the Conservancy. The Conservancy may provide recommendations to Grantor as to ecologically beneficial timber reforestation and selective harvesting practices on the Property, including, without limitation, how forest management practices may emulate or replicate natural disturbance regimes or how forest management practices may increase the suitability of the Property as wildlife habitat, which recommendations shall in good faith be considered by Grantor and acted upon by Grantor if Grantor determines in its full discretion it is possible to do so.
- K. Keeping domestic pets; provided that each pet is under the control of a responsible person, does not harass wildlife, and is not kept in a manner that attracts wildlife.
- L. Personal recreational use, excepting those practices listed below among Inconsistent Uses of the Property.
- M. The creation of consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of securing repayment of indebtedness of the Grantor is allowed, so long as such liens shall remain subordinate to this Easement.
- N. The change or adjustment of lot lines for tax purposes or the change or adjustment of the western boundaries of that portion of the Property in Section 17 by subsequent survey to conform the boundaries to actual topographic conditions; provided that the Conservancy is notified in writing in advance of such change or adjustment, such change or adjustment will not result in less overall acreage being covered by the Easement, and the change or adjustment in the legal description to the Easement is recorded as an amendment to the Easement.
- O. The undertaking of other activities necessary to protect public health or safety on the Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; provided that any such activity shall be conducted so that interference with the conservation values of the Property is avoided, or, if avoidance is not possible, minimized to the extent possible.
5. Inconsistent Uses of the Property. The following uses and practices on the Property shall be prohibited, except as specifically provided in Paragraph 4 and this Paragraph 5:



- A. Further division, subdivision, or de facto subdivision of the Property.
 - B. Filling, excavating, dredging, mining, drilling, and the exploration for or extraction of minerals, hydrocarbons, soils, sand, gravel, rock, or other materials on or below the surface of the Property, except for purposes specifically permitted in this Easement. The exceptions listed in this Paragraph B shall not be interpreted to permit any extraction or removal of surface materials inconsistent with Section 170(h)(5) of the IRS Code and the applicable Treasury Regulations.
 - C. More than a de minimis use for a commercial recreational activity, as such terms are defined by Section 2031(c)(8)(B) of the IRS Code.
 - D. The storage, dumping or other disposal of toxic and/or hazardous materials.
- Notwithstanding anything in this Easement to the contrary, this prohibition is not intended to and does not make the Conservancy an owner of the Property, nor does it permit the Conservancy to control any use of the Property by the Grantor which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that the Conservancy may bring an action to protect the conservation values of the Property, as described in this Easement. (This prohibition is not intended to and does not impose liability on the Conservancy, nor shall the Conservancy be construed as having liability as a "responsible party" under CERCLA or similar federal or state statutes.)
- E. Dumping or other disposal of non-compostable refuse, animal carcasses, wildlife-attracting materials, or any other material which could reasonably be considered debris.
 - F. The change, disturbance, alteration, or impairment of the significant natural ecological features on the Property.
 - G. Conversion of native vegetation to exotic cover species or the intentional introduction of non-native plant species; farming, plowing or any type of cultivation is prohibited.
 - H. Intentional introduction or release of nonnative animal species.
 - I. Establishment and operation of a livestock feedlot or any wild game farming or ranching facilities, which shall be defined for purposes of this Easement as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock for hire.



J. Construction or placement of any buildings, temporary living quarters of any sort, mobile homes, commercial signs, billboards or other advertising materials, or utility towers or other structures, except as permitted in this Easement and except that vehicular campers owned by Grantor or guests may be parked on the Property as appropriate to accommodate normal visitation.

K. Construction of roads or vehicle trails except as permitted in this Easement.

L. Use of snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles off of roads or travelways, except for agricultural or property-maintenance purposes.

M. Cutting, removing, or destruction of native vegetation, except as necessary to conduct authorized activities or uses permitted by this Easement.

N. Animal trapping for purposes other than control of predatory animals which demonstrably have caused damage to the Property. Trapping methods employed must be selective for the target species and administered as humanely as is possible.

O. Application of biocides, herbicides, defoliant, chemical fertilizers, or other chemicals.

P. Changing the topography of the Property by placing on it any soil, dredging spoils, land fill, or other material, except as necessary to conduct authorized activities or uses permitted by this Easement.

6. Prior Notice and Approval. Grantor shall not undertake or permit any activity requiring prior approval by the Conservancy without first having notified and received approval from the Conservancy as provided herein. Prior approval is specifically required for Paragraphs 4.A (new road construction), 4.F (new fence construction), 4.H (use of agricultural chemicals for the control of agricultural or forest pests), and 4.I (use of biological weed and insect control agents). Grantor is encouraged, but not required, to meet with appropriate staff of the Conservancy to discuss the proposed activity requiring prior approval so that Conservancy comments and suggested modifications can be incorporated into the proposal before it is submitted to the Conservancy for formal approval.

Prior to the commencement of any such activity, Grantor shall send the Conservancy written notice of intention to undertake or permit such activity. The notice shall inform the Conservancy of all aspects of the proposed activity, including location, design, materials or equipment to be used, dates and duration, and any other relevant information, and shall be sent by registered or certified mail, return receipt requested, to The Nature Conservancy,



Washington Field Office, whose address is 217 Pine Street, Suite 1100, Seattle, WA 98101, or such other addresses as Grantor may from time to time be informed of in writing by the Conservancy. The purpose of such notification is to afford the Conservancy an opportunity to ensure that the activities or uses in question are designed and carried out in a manner consistent with the conservation purposes of this Easement.

The Conservancy shall have ten (10) days from receipt of the notice, as indicated by the date of the return receipt, to request additional information to evaluate the proposed activity or to indicate that it has sufficient information to proceed with its evaluation. Where no additional information is requested, the Conservancy shall have forty-five (45) days from receipt of the notice, as indicated by the date of the return receipt, to review the proposed activity and to notify Grantor of any objections thereto and any modifications required to make the proposed activity consistent with the Easement. Where additional information is requested, the Conservancy shall have thirty (30) days from receipt of the additional information requested, as indicated by the date of the return receipt, to review the proposed activity and to notify Grantor of any objections thereto and any modifications required to make the proposed activity consistent with the Easement.

The Conservancy's decision to approve, approve with modifications or disapprove the activity proposed by Grantor shall be sent by registered or certified mail, return receipt requested, to Grantor at the address first stated above, or to such other address as the Conservancy may from time to time be informed of in writing by Grantor.

A decision by the Conservancy to disapprove a proposed activity must be based upon the Conservancy's determination that the proposed activity is inconsistent with the conservation purposes of the Easement and cannot be modified to be made consistent with the Easement. If in the Conservancy's judgment it is possible that the proposed activity can be modified to be consistent with the Easement, the Conservancy's decision notice shall inform Grantor of such modification(s) as provided above. Once modification is made to the satisfaction of the Conservancy or the Conservancy otherwise concurs with the matters set forth in Grantor's notice, the proposed activity may thereafter be conducted in a manner that is acceptable to the Conservancy.

Should the Conservancy fail to post its response to Grantor's notice within forty five (45) days of its receipt of notice or within thirty (30) days of the time that the Conservancy has received adequate information to evaluate the proposed activity, whichever is later, the proposed activity is automatically deemed consistent with the terms of the Easement, the Conservancy having no further right to object to the activity identified by such notice.

7. Preventive Discussions and Alternative Dispute Resolution. Grantor and the Conservancy will promptly give the other notice of problems or concerns arising in connection with the other's actions under the Easement or the use of or activities or conditions

on the Property, and will meet as needed, but no later than fifteen (15) days after receipt of a written request for a meeting, to minimize the same.

If the dispute is not resolved through preventive discussions, and if the Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation or arbitration by request made in writing to the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single mediator or arbitrator to hear the matter. The matter shall be settled in accordance with any Washington State mediation or arbitration statute then in effect, and a mediation or an arbitration award may be entered in any court having jurisdiction. If mediation or arbitration is pursued, the prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for all its costs and expenses related to such mediation or arbitration, including, without limitation, the fees and expenses of the mediator or arbitrator and attorney's fees, which shall be determined by the mediator or arbitrator or any court having jurisdiction that may be called upon to enforce or review the award.

8. Remedies. Breach and Restoration. In the event a violation of any restriction contained herein, whether by Grantor or a third party under Grantor's control, comes to the attention of the Conservancy, the Conservancy shall notify Grantor in writing of the violation. Grantor shall have thirty (30) days after the receipt of such notice to undertake actions, including restoration of the Property, that are reasonably calculated to swiftly correct the conditions caused by such violation. If Grantor fails to take such corrective action, the Conservancy may, at its discretion, undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections, and the cost of the corrections, including the Conservancy's expenses, court costs, and legal fees, shall be paid by Grantor, provided either Grantor, members of Grantor or their family, agents, guests, employees or other persons permitted by Grantor are determined to be responsible for the violation.

In the event that Grantor undertakes any activity requiring approval of the Conservancy without or in advance of securing such approval, or undertakes any activity in violation of the terms of the Easement, the Conservancy shall have the right to force, by appropriate legal or equitable action, including an action for injunction or specific performance, the restoration of that portion of the Property affected by the activity to the condition that existed prior to the undertaking of the unauthorized activity. In such case, the costs of restoration and the Conservancy's costs of suit, including reasonable attorneys' fees, shall be borne by Grantor or those heirs, personal representatives, or assigns against whom a judgment is entered, or, in the event that the Conservancy secures redress without a completed judicial proceeding, by Grantor or those heirs, personal representatives, or assigns who are otherwise determined to be responsible for the unauthorized activity; provided, however, that if Grantor ultimately prevails in a judicial enforcement action brought by the Conservancy, the Conservancy shall



bear both its own costs and Grantor's reasonable costs and expenses of suit, including, without limitation, reasonable attorneys' fees.

Enforcement of the terms and provisions of this Easement shall be at the discretion of the Conservancy. Any forbearance on behalf of the Conservancy to exercise its rights hereunder in the event of any breach by Grantor or Grantor's respective heirs, personal representatives, or assigns shall not be deemed or construed to be a waiver of the Conservancy's rights hereunder in the event of any subsequent breach.

Neither Grantor nor the Conservancy shall be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if such party is prevented from fulfilling such obligation by, or such condition fails to occur due to: (a) Actions by trespasser upon the Property; (b) Forces beyond such party's reasonable control, including, without limitation, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, proceeding by court or public authority, or act or failure to act by court, public authority or third party, which forces by exercise of due diligence and foresight such party could not reasonably have expected to avoid; or (c) Any action deemed reasonable by Grantor 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 Grantor has not undertaken suit itself, Grantor agrees, at the Conservancy's option, to assign its right of action to the Conservancy or to appoint the Conservancy its attorney in fact, for purposes of pursuing enforcement action against the responsible parties.

9. Liabilities. Grantor shall hold harmless, indemnify, and defend the Conservancy and the Conservancy's members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with the presence or release of any hazardous material or substance of any kind on the Property. This paragraph shall not apply in the case of any hazardous material or substance in any manner placed on the Property by the Conservancy or the Conservancy's representatives or agents.

10. Taxes. Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Property and to bear all costs of operation, upkeep, and maintenance of the Property, and does hereby indemnify the Conservancy therefor.

11. Access. Nothing herein contained shall be construed as affording the public access to any portion of the Property.



12. Assignment. The Conservancy may assign the Easement; provided that:

A. The Conservancy notify Grantor in writing, at Grantor's last known address, in advance of such assignment. Such notice shall indicate the name(s) of the organization(s) being considered by the Conservancy for such assignment, the reasons why the Conservancy is contemplating such assignment, and shall be sent by registered or certified mail, return receipt requested. Grantor shall have fifteen (15) days from receipt of the notice, as indicated by the date of the return receipt, to review the proposed assignment and to comment on the proposed assignment or to request a meeting with the Conservancy to comment on the proposed assignment. The Conservancy shall consider, but shall not be bound by, the comments, concerns and desires of Grantor with respect to such assignment.

B. The Conservancy shall require, as a condition of such transfer, that the conservation purposes of the Easement continue to be carried out.

C. An assignment may be made only to an organization qualified at the time of transfer as an eligible donee under the IRS Code and Washington's conservation easement statute, Section 64.04.130.

13. Change of Conditions. The fact that any use of the Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted thereunder, has been considered by the Grantor in granting this Easement. It is Grantor's belief that any such changes will increase the benefit to the public of the continuation of this Easement, and it is the intent of both Grantor and the Conservancy that any changes should not be assumed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this paragraph. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to this paragraph.

14. Subsequent Sale, Exchange or Involuntary Conversion. Grantor and the Conservancy agree that the granting of this Easement immediately vests the Conservancy with a property right, and stipulate that the fair market value of this property right shall be determined by: (a) multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in the value after the date of this grant attributable to improvements) by (b) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate a deduction for federal income tax purposes allowable by reasons of this grant, pursuant to Section 170(h) of the IRS Code. Grantor

hereby agrees to and shall provide the Conservancy with a copy of said appraisal. Grantor and the Conservancy further agree that the ratio of the Easement's value to the value of the Property, as unencumbered by the Easement, shall remain constant, so that should this Easement be extinguished by a change in conditions, the Conservancy shall be entitled to a portion of the proceeds from any subsequent sale, exchange or involuntary conversion. The Conservancy's share of the proceeds shall be at least equal to that proportionate value of the Property as determined above at the time of such sale, exchange or involuntary conversion.

The Conservancy may be compensated for the value of this property right only in the event of a condemnation or other change in conditions resulting in the extinguishment of the Easement (as provided in Treas. Reg. Section 1.170A-14(g)(6)(i)). The Conservancy shall apply its share of the proceeds in a manner consistent with the conservation purposes of the Easement or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in IRS Code Section 170(h)(4)(a)(ii), as amended, and in regulations promulgated thereunder.

15. Amendment. If circumstances arise under which an amendment to or modification of the Easement would be appropriate, Grantor and the Conservancy may jointly amend the Easement; provided that no amendment shall be allowed that affects the qualification of the Easement under the IRS Code or Washington's conservation easement statute, Section 64.04.130. Any such amendment shall be consistent with the conservation purposes of the Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be undertaken on the Property other than development or improvements currently permitted by the Easement, and shall not impair any of the significant conservation values of the Property. Any such amendment shall be recorded in the official records of the county in which the Property is located.

16. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceeding in a court of competent jurisdiction.

17. Interpretation. The provisions of this Easement shall be liberally construed to effectuate their purpose of preserving and protecting habitat for wildlife, unique native plants, and diverse forest, meadow and riparian vegetative communities. No remedy or election given by any provision in this Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement. In the event of any conflict between the provisions of this Easement and the provisions of any use and zoning restrictions of the state or county in which the Property is located, or any other governmental entity with



jurisdiction, the more restrictive provisions shall apply. This Easement shall be interpreted in accordance with the laws of the state of Washington.

18. Compliance Certificates. Upon written request by Grantor, the Conservancy shall within thirty (30) days of such written request execute and deliver to Grantor, or to any party designated by Grantor, any document, including a compliance certificate, that certifies, to the best of the Conservancy's knowledge, the status of Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of the Conservancy's most recent inspection. If Grantor requests more current documentation, the Conservancy shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request.

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

To Grantor: Swauk Valley Ranch LLC
P.O. Box 24567
Seattle, Washington, 98124

To the Conservancy: The Nature Conservancy
Washington Field Office
217 Pine Street
Suite 1100
Seattle, WA 98101

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

20. Subordination. At the time of conveyance of this Easement, the Property is subject to that certain deed of trust dated January 20, 2000, which was recorded under Auditor's File No. 20010802046, records of Kittitas County ("Deed of Trust"). The beneficiary of the Deed of Trust has agreed by separate instrument, which will be recorded concurrently with this Easement, to subordinate its rights in the Property to this Easement to the extent necessary to permit the Conservancy to enforce the conservation purposes of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the beneficiary under the Deed of Trust.



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21. Miscellaneous.

A. Definitions. The terms "Grantor" and "Conservancy" as used herein shall be deemed to include, respectively, the Grantor, its successors and assigns, and its members and their heirs, personal representatives and assigns, and the Conservancy, its successors and assigns.

B. Binding Effect. Grantor intends that the Easement shall run with and burden title to the Property in perpetuity, and shall bind Grantor, its successors and assigns, and its members and their heirs, personal representatives and assigns.

C. Severability. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions hereof and the application of such provision to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 15 above.

E. Recordation. The Conservancy shall record this instrument before the end of the year in which this gift of a conservation easement is given in the official records of Kittitas County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

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

G. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Property, including, without limitation, a long-term leasehold interest (greater than 10 years), and shall notify the Conservancy in writing of any transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

H. Termination of Rights and Obligations. Notwithstanding anything contained in this Easement to the contrary, upon transfer of a party's interest in all or a portion of the property, that party's rights and obligations under this Easement terminate to the portion transferred, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

I. Effective Date. The effective date of this Easement is the date of recording in the records of Kittitas County, Washington.

J. Counterparts. The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.


TO HAVE AND TO HOLD the said Easement unto the said Conservancy, its successors and assigns, forever.



IN WITNESS WHEREOF, Grantor has hereunto set its hand this 21st day of December, 2001.

GRANTOR:

Swauk Valley Ranch LLC, a Washington limited liability company

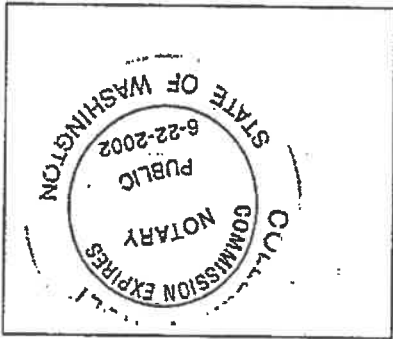
By: 

 Dean Allen
 Its General Manager

STATE OF WASHINGTON)
) ss.
 COUNTY OF KING)

I certify that I know or have satisfactory evidence that Dean Allen is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the General Manager of Swauk Valley Ranch LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12-21-01



(Use this space for notarial stamp/seal)

Colleen E. Holt
 Notary Public
 Print Name Colleen E. Holt
 My commission expires 6-22-02



The Nature Conservancy does hereby accept the above Grant Deed of Conservation Easement.

Dated: Dec. 21st 2001

The Nature Conservancy, a District of Columbia nonprofit corporation

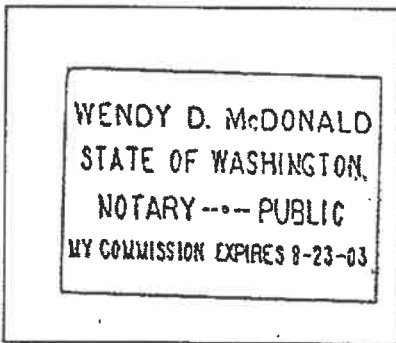
By: David H. Wuker

Its State Director

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that David H. Wuker is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the State Director of The Nature Conservancy to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: December 21, 2001



(Use this space for notarial stamp/seal)

Wendy McDonald
Notary Public
Print Name Wendy McDonald
My commission expires 8-23-03



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Exhibit A

Property Description

All that certain real estate situated in Kittitas County, Washington, more particularly described as follows:

Tract 1:

The East ½ of the Northeast ¼ of Section 8, Township 19 North, Range 17 East, W.M., in the County of Kittitas, State of Washington.

Tract 2:

The East ½ of the Southeast ¼ of Section 8, Township 19 North, Range 17 East, W.M., in the County of Kittitas, State of Washington.

Tract 3:

The West ½ of the East ½ and the East ½ of the West ½ of Section 8, Township 19 North, Range 17 East, W.M., in the County of Kittitas, State of Washington.

Tract 4:

The Southeast ¼ and the East ½ of the Northeast ¼ of Section 17, Township 19 North, Range 17 East, W.M., in the County of Kittitas, State of Washington.

(Tract 4 is a portion of Tract 7, which contains ALL of Section 17, Township 19 North, Range 17 East, W.M., in the County of Kittitas, State of Washington, conveyed to Swauk Valley Ranch, LLC through that certain Statutory Warranty Deed, which was recorded under Auditor's File No. 199806290036)



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Exhibit B

Map of the Property

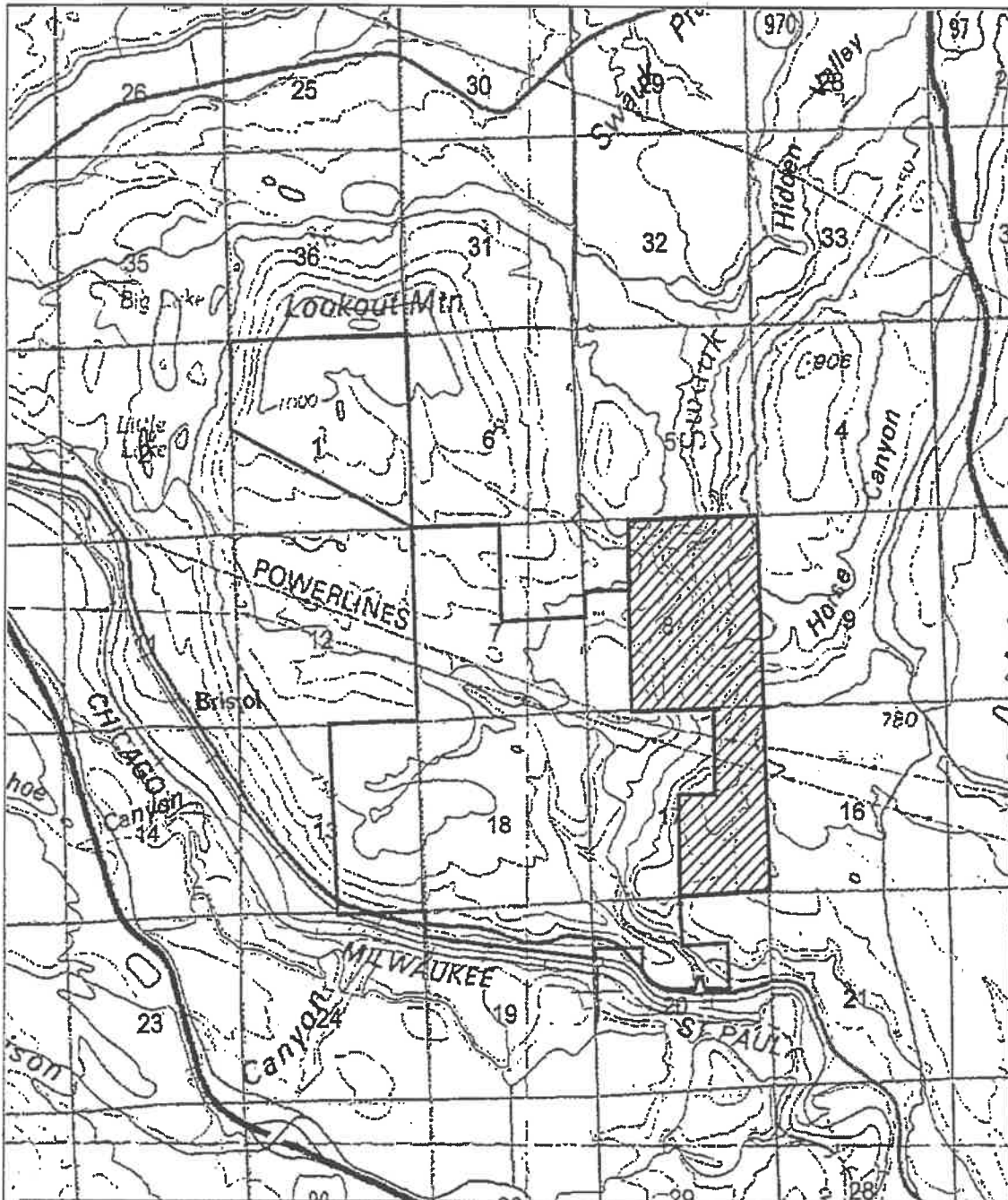
Please see the attached map.





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Map 1. Property Locator Map
Swauk Valley Ranch Conservation Easement
 T 19 N, R 17 E - Kittitas County, WA

 Swauk Valley Ranch Easement Property - approximately 731 acres

 Swauk Valley Ranch

 Lookout Mountain Conservation Easement - approximately 480 acres

East Cascades & Modoc Plateau ecoregion

1 0 1 2 Miles



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Exhibit C

Acknowledgment of Easement Documentation Report

Grantor and the Conservancy acknowledge that each has read the "Swauk Valley Ranch Easement Documentation Report," dated December 21, 2001, and that the report accurately reflects the currently available baseline data regarding the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

THE NATURE CONSERVANCY,
a District of Columbia
non-profit corporation

SWAUK VALLEY RANCH, LLC,
a Washington limited liability
company

By: _____
Its _____
Date: _____

By: Dean Allen
Dean Allen
Its General Manager
Date: DEC. 21, 2001

(see next page)

Exhibit C

Acknowledgment of Easement Documentation Report

Grantor and the Conservancy acknowledge that each has read the "Swauk Valley Ranch Easement Documentation Report," dated December 21, 2001, and that the report accurately reflects the currently available baseline data regarding the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

THE NATURE CONSERVANCY,
a District of Columbia
non-profit corporation

By: David H. Walker
Its State Director
Date: Dec. 21, 2001

SWAUK VALLEY RANCH, LLC,
a Washington limited liability
company

By: Dean Allen
Its General Manager
Date: _____

(see previous page)