

After Recording, return to:

Kittitas County Public Works Department
Attention Arden: Thomas, Water Resources Manager
411 N Ruby ST, Suite 1
Ellensburg WA 98926

CONSERVATION EASEMENT AGREEMENT

Reference number(s) of related document: N/A
Grantor(s): Hein & Hein Enterprise, L.L.C.
Grantee(s): Kittitas County
Abbreviated Legal Description: Ptn. N ½ SE ¼ S. 29, T. 20 N., R. 16 E.W.M.
Complete legal descriptions on Page ___ of this document.
Assessor's Tax Parcel No(s): 267336; and 107336

EFFECTIVE DATE: _____, 2020

THIS CONSERVATION EASEMENT AGREEMENT is entered into effective between Hein and Hein Enterprise, L.L.C., a Washington limited liability company ("Grantor") and Kittitas County Washington, a political subdivision of the State of Washington ("Grantee") (together, the "Parties").

Recitals

- A. _____ A. _____ Grantor owns the below legally described "Burdened Property," located in Kittitas County, Washington, which comprise portions of the proposed Airport Road Short Plat under pending short plat application SP-20-0004.
- A.B. Kittitas County Code (KCC) requires that applicants for land uses that require water satisfy adequate water supply determination requirements (KCC 13.35). KCC 13.35 and 16.32 allow for a voluntary Conservation Easement to be recorded, providing evidence that parcels subject thereto ~~that the restricted parcels will not require new water.~~

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B. The intent of the Parties, through this Conservation Easement, is to be restrict use of the Burdened Property to qualifying open space or agricultural purposes and, in so doing, to prohibit uses of ground-water, including new use of domestic water thereon.

C. Grantor proposes to impose the herein Conservation Easement as a means to eliminate ~~or toll~~ "Adequate Water Supply" requirements for the Burdened Property that otherwise would be a condition on final short plat approval under ~~Kittitas County Code Chs~~KCC. 13.35 and 16.32.

NOW THEREFORE, subject to the terms and conditions set forth below, Grantor, for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, grants and conveys to Grantee a Conservation Easement on the following terms and Conditions:

Agreement

1. Grantor, pursuant to KCC 16.32.050 and 16.08.061, hereby declares a Conservation Easement against the Burdened Property, legally described and depicted on Exhibit A hereto, to prohibit uses of ground-water, including ~~of~~ domestic water thereon, until such time, if ever, as said Conservation Easement may be extinguished or otherwise terminated in the matter provided by law. The herein declaration is made in connection with and expressly conditioned on Grantee's final and binding approval of short plat application SP-20-0004.

2. In connection with such declaration, the Parties understand and agree that, for so long as the Conservation Easement shall remain in effect, Grantor, its heirs, successors, and assigns, shall not be permitted to undertake any construction or improvements on the Burdened Property requiring new uses of ground-water, including domestic water supply or delivery, including without limitation, homes or other structures subject to Adequate Water Supply requirements under state and county law. Further, Grantor shall not apply for permits or other permissions to undertake such construction or improvements, including for installation of domestic groundwater wells or domestic groundwater ~~water~~ delivery infrastructure to serve the Burdened Property from offsite surface or groundwater sources.

3. Following imposition of the Conservation Easement, Grantor shall continue to privately own and manage the Burdened Property, it being the mutual intent of the Parties that the grant of protection hereunder shall not exceed that necessary to facilitate the agreed prohibition against use of domestic-new groundwater ~~water~~ thereon. Except as specifically provided herein, imposition of the Conservation Easement shall not restrict or prohibit Grantor, its heirs, successors, and assigns, from using or undertaking any activity on the Burdened Property as allowed by local, state, and federal law.

4. Consistent with KCC 16.08.061 and KCC 16.32.050, Grantor may in the future apply to Kittitas County to discontinue the herein Conservation Easement through the administrative-only review process for short plats.

5. Grantee, upon advance permission from Grantor, or pursuant to a validly issued administrative search warrant, shall be entitled ~~entered~~ to access the Burdened Property for the limited purpose of monitoring Grantor's compliance with this Conservation Easement.

6. This Conservation Easement does not grant or permit public access to any portion of the Burdened Property.

Conservation Easement - 2

Commented [AT1]: Can you explain why this language is proposed. Specifically, the intent of the word "toll" is not clear to me.

Commented [PD2R1]: Arden, this was intended to be a placeholder for Agreement paragraph 4 below, to acknowledge that AWS requirements MIGHT become applicable to the affected parcels in the future – if the Conservation Easement can be legally terminated or extinguished. Admittedly, "toll" is a bit confusing her. So, I have deleted it – with the assumption that County counsel approves Agreement paragraph 4, or something similar, below.

Commented [AT3]: I will just want to verify this language with our legal

Commented [PD4R3]: Understood.

Commented [AT5]: entitled?

Commented [PD6R5]: Good catch.

7. This Conservation Easement shall run with the land and shall be binding on successors, assigns, heirs of Grantor and Grantee, until such time, if ever, as terminated in the matter provided by law.

8. In the event that any of the provisions contained in this Conservation Easement are declared invalid or unenforceable in the future, all remaining provisions shall remain in effect.

IN WITNESS WHEREOF, the undersigned have set their hands the day and year first above written.

GRANTOR(S):

Hein & Hein Enterprise, L.L.C.

John Hein, Governor

Claire Nicholls, Governor

GRANTEE(S):

Kittitas County

By: Commissioner(s)? Public Works?

Commented [PD7]: No problem. Will we need signatures from all three? Or just one? If this needs to be approved during an open public meeting of the Commissioners, when might that occur?

STATE OF WASHINGTON)

) ss.

County of Kittitas)

I certify that I know or have satisfactory evidence that John Hein and Claire Nicholls are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it as Governors of Hein & Hein Enterprise, L.L.C., to be their free and voluntary act of such entity for the uses and purposes mentioned therein.

Dated this ____ day of _____, 2020.

Notary Public in and for the state of Washington,
residing in _____.
My Commission Expires: _____.

STATE OF WASHINGTON)

) ss.

County of Kittitas)

I certify that I know or have satisfactory evidence that _____ is the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument and acknowledged it as _____ of Kittitas County, a political subdivision of the State of Washington, to be their free and voluntary act of such entity for the uses and purposes mentioned therein.

Dated this ____ day of _____, 2020.

Notary Public in and for the state of Washington,
residing in _____.
My Commission Expires: _____.

DRAFT

Exhibit "A"

Legal Description of Burdened Property: [TBD]

Commented [PD8]: Assuming this Conservation Easement is to be recorded as an advance condition of SP approval, we will need to record against the two (pre-BLA) parcels identified on page 1. I will check with Encompass. They may have proposed, new metes-and-bounds descriptions for future Lots 2 and 4. If not, I assume we can attach Encompass's revised SP survey/map...

DRAFT