DEED OF CONSERVATION EASEMENT  
(Kittitas County Transfer of Development Rights Program)

Grantor:__________________________________________________________

Grantee:__________________________________________________________

Legal Description:  
Abbreviated form:________________________________________________________________________
(Additional legal at Exhibit A)

Assessor's Property Tax Parcel Account Number:__________________________
(Burdened Property)

Transfer of Development Rights Sending Site Certificate Numbers:____________

THIS DEED OF CONSERVATION EASEMENT ("Easement") is made by
____________________________ [husband and wife], having an address at ________________________
(collectively, "Grantor"), in favor of __________________________, having an address at
____________________________ (collectively, "Grantee") (collectively, the "Parties").

Section 1.  Recitals.

WHEREAS, Grantor is the sole owner in fee simple of certain real property located in
Kittitas County, Washington (the "County"), more particularly described in Exhibit A and
shown on Exhibit B, which exhibits are attached hereto and incorporated herein by this
reference (the "Property").

WHEREAS, the Property is currently being used by Grantor primarily as [farm and
agricultural land] [forest land] and possesses certain [farm and agricultural] [forest] values
(together, the "Resource Values") of great importance to Grantor and the people of the
County. The Resource Values of the Property include: [describe Resource Values specific to
WHEREAS, the Property is also desirable property for residential and/or commercial development because of its location and orientation, which development could diminish or destroy the Resource Values of the Property.

WHEREAS, Grantor, as owner of the Property, has the right to identify, protect, and preserve the Resource Values of the Property.

WHEREAS, chapter 17.13 of the Kittitas County Code (the “TDR Program”) authorizes the transfer of development rights from “sending sites” that provide public benefits by permanently conserving rural farm and forest land through acquisition and removal of the development rights on such property. Development rights properly transferred from a designated sending site can be applied, pursuant to the TDR Program, to eligible “receiving sites”.

WHEREAS, development rights that may be transferred from designated sending sites to eligible receiving sites are documented under the TDR Program in one or more TDR certificates, a process which requires the recording of a TDR conservation easement on the sending site property to indicate the development limitations on the property necessary to protect, maintain and preserve its resource values.

WHEREAS, on ____________, 2___, Grantor submitted an application to designate the Property as a sending site under Kittitas County Code (“KCC”) chapter 17.13, and to obtain TDR certificate(s) for transfer from the Property to eligible receiving sites. (“TDR Application”). The TDR Application materials submitted by Grantor are on file with the County, in the Community Development Services Office under File No. _____, and are incorporated herein by this reference as if set forth in full. Grantor represents that these application materials reflect existing conditions on the Property as of the date this Easement is executed as well as Grantor’s intentions concerning future residential development, if any, to occur on the Property.

WHEREAS, the County has determined that the Property qualifies as a sending site under the TDR Program. The County has determined[, after excluding from its calculation existing homesites on the Property and ____ number of reserved development rights (“Reserved Development Rights”),] that the Property has a total of ____ development rights available for transfer (“Development Rights”) from the Property to eligible receiving sites.

WHEREAS, Grantor now desires to document the development limitations on the Property necessary to protect, maintain and preserve the Resource Values of the Property by granting a conservation easement on the Property on the terms set forth herein; and

WHEREAS, consistent with the foregoing requirements, and subject to the specific terms of this Easement contained herein, Grantor and Grantee intend and have the common
purpose of conserving the Property for [farm and agricultural] [forestry] use by placing restrictions on the use of, and activities on, the Property, which restrictions shall run with the land and bind the Property in perpetuity.

Section 2. Conveyance, Consideration and Perpetual Duration.

A. For the reasons stated above (which Recitals are incorporated into this Easement by this reference), to permit the transfer of certified development rights from the Property, and in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, Grantor hereby voluntarily grants, conveys and warrants to Grantee a conservation easement over the Property, consisting of certain rights in the Property, as defined in this Easement, subject only to the terms and restrictions contained in this Easement and to title matters of record as of the effective date of this Easement. Title matters of record as of the effective date of this Easement are reflected on the title report dated ____________ and attached hereto and incorporated herein as Exhibit C.

B. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

C. Grantor expressly intends that this Easement run with the land and that this Easement be perpetually binding upon Grantor’s successors and assigns unless terminated due to changed circumstances as provided in Section 9 herein.

Section 3. Purpose. The purpose of this Easement (the “Purpose”) is to ensure, through the removal of development rights on the Property, that the Property will be retained forever predominantly as [farm and agricultural][forest] land suitable for [farm and agricultural][forestry] uses, including the production of [food and fiber][timber], by present and future generations, and to prevent any use of, or activity on, the Property that will significantly impair or interfere with its Resource Values. Grantor intends that this Easement will confine the use of, or activity on, the Property to such uses and activities that are consistent with this Purpose.

Section 4. Rights Conveyed to Grantee. To accomplish the Purpose, the following rights are provided to Grantee by this Easement:

A. The right to enter the Property at reasonable times in order to monitor Grantor’s compliance with and to enforce the terms of this Easement, provided that such entry shall be conducted with a minimum of [30] calendar-day written notice. Such visit shall not in any case unreasonably interfere with Grantor’s use and quiet enjoyment of the Property. No right of access by the general public to the Property is authorized by this Easement without the Grantor’s prior consent.

B. The right to enforce the terms of this Easement, as provided for in Section 8, including the right to require the restoration of the Property to its condition prior to any violation of the terms of this Easement.

C. No other rights are granted to Grantee other than those listed in subsections A.
and B. of this Section 4.

Section 5. Prohibited Uses and Activities. Grantor is prohibited from engaging in or permitting any of the following uses or activities on the Property:

A. Grantor shall not use the Development Rights now or hereafter associated with the Property[, except those Reserved Development Rights specifically reserved to Grantor as set forth in Section 6]. The Parties agree that[, except for the Reserved Development Rights specifically reserved to Grantor as set forth in Section 6,] the Development Rights are permanently removed from the Property. The Development Rights may not be used or transferred to any other portion of the Property as it now or hereafter may be bounded or described or to any other property, except pursuant to the TDR Program or a successor program authorized by Kittitas County Code as currently adopted or hereby amended.

B. Grantor shall not undertake any division, subdivision or partitioning of the Property, whether by physical or legal process, which includes, but is not limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, administrative segregations, boundary line adjustments, intervening ownership, one-time lot split, or other process by which the Property is divided into lots or in which title to different portions of the Property are not held in unified ownership (“Land Division”), unless such Land Division allocates the Reserved Development Rights between the divided parcels of Property in a manner consistent with the terms of this Easement. This Easement shall continue to encumber all portions of the Property despite not being held in unified ownership.

C. Grantor shall not construct any buildings, dwellings, structures, or other improvements of any kind on the Property except as provided in Section 6.

D. Grantor shall not use the Property for any industrial or commercial purpose detrimental to the preservation and protection of the Resource Values of the Property.

E. Grantor shall not explore for, or develop and extract, minerals, soil, sand, gravel, rock, peat, sod or hydrocarbons on or below the surface of the Property except as provided in Section 6.

F. Grantor shall not engage in any use or activity on the Property that causes or is likely to cause material soil degradation or erosion.

G. Grantor shall not dispose of or store rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other hazardous waste or material on the Property in violation of Kittitas County Code Chapter 18, as it currently exists or is subsequently amended.

Section 6. Reserved Rights of Grantor.

As owner of the Property, Grantor retains the right to perform any act consistent with applicable zoning, to the extent such act is not prohibited or limited under the terms of this Easement. These ownership rights include, but are not limited to, the right to continue
operation of such businesses as farming, timber harvesting, and sports and recreation, the right to exclude any member of the public from trespassing on the Property, the right to sell, lease or otherwise transfer the Property to anyone Grantor chooses, and the following rights determined to be consistent with the Purpose of this Easement:

A. Grantor may maintain, repair, renovate, expand, or replace existing dwellings on the Property, as shown in Exhibit B. For the Purpose of this Easement, “dwelling” means a structure containing sleeping and kitchen facilities for one or more occupants. Each dwelling may have such additional associated structures and improvements, including, but not limited to, garages, sheds, utilities, roads, parking areas, composting areas, gardens, and lawns, as Grantor may deem necessary. New dwellings may be constructed with the prior written consent of the Grantee as provided in Section 7.

B. Grantor may engage in farm and agricultural and forestry uses and activities on the Property.

1. Permitted farm and agricultural uses and activities on the Property include, but are not limited to, [list all that apply] [the planting, raising, and harvesting of hay or similar grass-like crops, fallowing land, the grazing of animals, the production of food, and any and all other uses generally considered as agricultural uses]. Agricultural uses may also include the primary processing, storage, and sale, including direct retail sale to the public, of crops and products harvested and produced principally on the Property.

2. Permitted forestry activities on the Property include, but are not limited to, any activity defined in or allowed by the State Forestry Regulations and any customary forestry-related activity that is conducted on or directly pertaining to forest land and relating to the growing, harvesting and processing of timber such as (a) road and trail construction, including grading and excavating rock or other materials from on-site pits or quarries for use on the Property; (b) final and intermediate harvesting, (c) pre-commercial thinning or pruning, (d) reforestation, (e) fertilization and the prevention and suppression of diseases and insects with pesticides and herbicides (including ground and aerial application of chemicals), and pest control including trapping, all to the extent allowed by State Forestry Regulations, (f) salvage of trees, (g) brush control, slash disposal and prescribed burning, (h) preparatory work such as tree marking, surveying and road flagging, (i) installation of gates and other measures to close access to the Property, (j) removal or harvesting of incidental vegetation from forest land such as berries, ferns, greenery, mistletoe, herbs, mushrooms and other products, and (k) protection of structures such as bridges, ponds and other improvements related to forestry practices.

3. All farm and agricultural and forestry activities shall be carried out in compliance with federal, state, and local regulations.

4. Grantor and Grantee expressly acknowledge that this Easement does not require Grantor to engage in farm and agricultural or forestry uses and activities on the Property if the Property is reserved for such uses and activities.

C. Grantor may maintain, renovate, expand or replace existing outbuildings or
other non-dwelling structures in substantially their present locations, as shown on Exhibit B. Grantor may construct new outbuildings or structures as reasonably necessary to support farm and agricultural and/or forestry uses and activities on the Property [with the prior written consent of Grantee as provided in Section 7].

D. Grantor may undertake other commercial non-development uses and activities on the Property that are not detrimental to preservation and protection of the Resource Values of the Property, such as trail access and hunting.

E. Grantor may construct non-impervious trails and undertake recreational and other activities, such as fishing, hunting, horse packing, and hiking, on the Property.

F. Grantor may construct, install, maintain, repair, renovate and replace utility systems (underground and above-ground).

G. Grantor may construct, maintain, reconstruct and replace fences on the Property.

H. Grantor may maintain, renovate, expand, or replace existing roads as shown on Exhibit B, or construct new roads necessary to further or maintain the Resource Values of the Property, to conduct farm and agricultural and/or forestry uses and activities on the Property, and/or to serve the residential and agricultural areas of the Property and Grantor’s adjacent properties. [The design and location of any new road, or replacement of an existing road in a new location, shall be subject to the prior written notice to and consent of Grantee as provided in Section 7].

I. [Grantor has Reserved Development Rights for the purpose of developing [list permitted uses, if desired] on the Property. Such development may not be completed in a manner that is inconsistent with the terms of this Easement.]

Section 7. Notice of Intent to Undertake Certain Potentially Inconsistent Activities. Whenever Grantor plans to undertake the following uses or activities on the Property, which might be inconsistent with the terms of this Easement depending on the manner in which they are carried out, Grantor will notify Grantee in writing not less than 30 days prior to the date that Grantor intends for the new activity or use to begin: (A) any Land Division of the Property (Section 5.B); (B) any commercial extraction of minerals, soil, sand, gravel, rock, peat, sod or hydrocarbons on or below the surface of the Property (Section 5.E); (C) expansion or replacement of existing dwellings or construction of new dwellings (Section 6.A); [(D) construction of new outbuildings or structures for farm and agricultural or forestry purposes (Section 6.C); and (E) construction of new roads or replacement of existing roads in new locations (Section 6.I)]. The notice shall describe the nature, scope, design, location, timetable and other material aspects of the proposed use to permit Grantee to make an informed judgment as to its consistency with the terms and Purpose of this Easement. Grantee may withhold its approval only upon a reasonable determination by Grantee that the use or activity as proposed would be inconsistent with the Purpose of the Easement. Appeal of the Grantee’s decision is governed by Chapter 36.70C RCW.
Section 8.  Enforcement. If Grantee becomes aware of a violation or threatened violation of this Easement by Grantor, Grantee shall provide Grantor written notice of such violation or threatened violation and conduct enforcement procedures as set forth in Kittitas County Code Title 18, Code Enforcement.

Any resident of Kittitas County who becomes aware of a violation or threatened violation of this easement by Grantor may provide Grantee written notice of such violation or threatened violation. Grantee shall have thirty (30) days to determine whether or not enforcement action, as provided in Section 8, shall commence. The decision of Grantee whether or not to commence enforcement as provided herein in Section 8 is a land use decision only appealable pursuant to Ch. 36.70C RCW. Any person exercising the right to seek a remedy as authorized herein, is deemed to have irrevocably waived any and all claims against Grantee for failing or refusing to enforce the prohibited uses and activities set forth in Section 5 herein. This grant of authority does not create a cause of action against the County for failure to enforce the prohibited uses and activities set forth in Section 5 herein. Any person exercising the right to seek a remedy as authorized herein, is deemed to have irrevocably waived any and all claims against the County for failing or refusing to enforce the prohibited uses and activities set forth in Section 5 herein.

Section 9.  Changed Circumstances and Termination.

A.  Grantor and Grantee acknowledge that conditions may change in the areas neighboring the Property, including, without limitation, increased development and land use and zoning changes. Grantor and Grantee expressly intend that this Easement will continue in perpetuity regardless of such changed conditions or circumstances, unless the conditions in subsection (B) apply.

B.  In the event that Grantor believes that circumstances have changed due to development in surrounding areas such that it is no longer possible for Grantor to continue to primarily use the Property as [farm and agricultural] [forest] land without substantial economic hardship, or that make the Purpose of this Easement no longer practicable to achieve, Grantor may notify Grantee in writing of such changed circumstances and indicating that it desires to purchase development rights for the Property pursuant to this provision (a “Changed Circumstances Notice”). The Changed Circumstances Notice must specify the set of facts that Grantor believes to constitute changed circumstances and will include any supporting documentation as Grantor believes to be reasonably necessary.

After receipt of a Changed Circumstances Notice, Grantee shall submit the question of whether circumstances have sufficiently changed due to development in surrounding areas such that it is no longer possible for Grantor to continue to primarily use the Property as [farm and agricultural] [forest] land without substantial economic hardship, or that make the Purpose of this Easement no longer practicable to achieve, to the Board of County Commissioners (BOCC). Grantor agrees to pay all costs associated with such submission, including without limitation reasonable attorneys’ fees. The BOCC shall review the Changed Circumstances
Notice and any supporting documentation, as set forth in Kittitas County Code 17.13.060(3). If the BOCC makes a determination that such development rights may be purchased, the Property shall not be released from the terms and conditions of this Easement unless, and until, such time as Grantor has acquired density credits from other sending property(ies) for use on the Property equal to the number of Development Rights removed from the Property through this Easement and has recorded the certificate(s) of such density credits in the official records of Kittitas County, Washington. At such time Grantor and Grantee agree to record a document in the official records of Kittitas County, Washington, releasing the Property from the terms and conditions of this Easement.

Section 10. Transfer of the Property. Upon transfer of the Property, or any interest in the Property, from one landowner to another, the conveyance document shall expressly refer to this Easement and be subject to its terms, covenants, conditions, and restrictions, which shall run with the land and bind the Property in perpetuity. The failure of Grantor to perform any act required by this subsection will not impair the validity of this Easement or limit its enforceability in any way.

Section 11. Amendment. This Easement may be amended by agreement of the Parties. Any such amendment must be consistent with the Purpose of this Easement and the provisions of the TDR Program and will be recorded in the official records of Kittitas County, Washington, and any other jurisdiction in which such recording is required.

Section 12. Notices. Any notice, approval or communication that either Party is required to send under this Easement must be given in writing to the following addresses:

To Grantor:  

To Grantee:  

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


A. Recordation. Grantee will record this Easement in a timely fashion 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.

B. Controlling Law and Interpretation. The interpretation and performance of this Easement is governed by the laws of the State of Washington. Any general rule of construction to the contrary notwithstanding, this Easement will be liberally construed in favor of the grant
to effect the Purpose of this Easement, the policies and purpose of the TDR Program and the policy and purposes of RCW 64.04.130 and chapters 84.33 and 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid will be favored over any interpretation that would render it invalid.

C. **Severability—Entire Agreement-No Forfeiture.** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement and the application of such provision to any other persons or in any other circumstances shall remain valid. This instrument sets forth the entire agreement of the Parties with respect to the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.

D. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to Grantee’s judicially appointed successor or a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and 84.34.250. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor’s last known address, in advance of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

E. **Merger.** In the event that Grantee acquires the fee title to all or a portion of the Property subject to this Easement, it is the intent of the Parties, both Grantor and Grantee, that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Property, notwithstanding any otherwise applicable legal doctrine under which such property interests would or might be merged. As the Parties intend that no such merger take place, and in view of the public interest in the enforcement of this Easement, the restrictions on the use of the Property, as embodied in this Easement shall, in the event fee title becomes vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Property as provided for herein. Grantee, as successor in title to Grantor under the circumstances described in the foregoing sentence, shall observe and be bound by the obligations of Grantor and the restrictions imposed on the Property by this Easement.

F. **Counterparts.** The Parties may execute this instrument in two or more counterparts, which will 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.

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

[H. **Subordination.** At the time of conveyance of this Easement, the Property is
subject to that certain mortgage or deed of trust dated ______________, which was recorded under Auditor's File No. ______________ ("Mortgage" or "Deed of Trust"). The beneficiary of the Mortgage or 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, and the Grantor has agreed to obtain subrogation to the extent necessary to permit Grantee to enforce the Purpose of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the beneficiary under the Mortgage or Deed of Trust.]

Section 15. Attachments (provided by Grantor).

A. Legal Description of Property Subject to Easement.
B. Site Map(s)
C. Permitted Exceptions/Title Report

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this ___ day of __________, 20__.  

GRANTOR:
_________________________________________________________________

_________________________________________________________________
By: ____________________________  
Title: ____________________________  

STATE OF WASHINGTON )  
) ss.                        
COUNTY OF KITTITAS )  

On this _____ day of ____________, 20____, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, hereby certify that I know or have satisfactory evidence __________________________ is the person who appeared before me, and said person acknowledged that they signed this instrument and acknowledged it be their free and voluntary act for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

_________________________________________________________________
NOTARY SIGNATURE
PRINTED NAME

_____________________________

NOTARY PUBLIC in and for the State of Washington, residing at __________________________
My Appointment expires __________________________

ACCEPTED BY:
KITTITAS COUNTY BOARD OF COMMISSIONERS

_____________________________

Chairperson

_____________________________

Vice-Chairperson

_____________________________

Commissioner

Approved as to legal form only:

_____________________________

Deputy Prosecuting Attorney

STATE OF WASHINGTON )
COUNTY OF KITTITAS )

On this ____________ day of ______________________, 20__ before me personally appeared to me ____________________________, ____________________, and ____________________________, known to be the duly elected, qualified and acting County Commissioners of Kittitas County, Washington, who executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said County, for the uses and purposes therein mentioned, and each on oath stated that they were authorized to execute said instrument by resolution of the Board of County Commissioners of said county, and that the seal affixed is the official seal of said County.

Given under my hand and official seal the day and year last above written.
EXHIBIT A
LEGAL DESCRIPTION OF SENDING PARCEL
EXHIBIT C
PERMITTED EXCEPTIONS/TITLE REPORTS