

After Recording Return to:

Snohomish County  
Planning and Development Services  
TDR Program Manager  
3000 Rockefeller Ave. M/S #604  
Everett, WA 98201

Tax Parcel Numbers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TRANSFER OF DEVELOPMENT RIGHTS  
CONSERVATION EASEMENT**

THIS TRANSFER OF DEVELOPMENT RIGHTS CONSERVATION EASEMENT (hereinafter, "Easement Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, by \_\_\_\_\_ (hereinafter, "Grantor") to Snohomish County (hereinafter, "Grantee" or "County"), a political subdivision of the State of Washington, acting in its governmental capacity.

**1. RECITALS**

1.1 Chapter 30.35A of the Snohomish County Code ("SCC") authorizes the transfer of development rights ("TDR") from "sending sites" with natural resource and open space values to "receiving sites" where development is encouraged, consistent with the Snohomish County Growth Management Act Comprehensive Plan.

1.2 Development rights are transferred from sending sites through the issuance of “TDR certificates” pursuant to chapter 30.35A SCC, a process which requires the grant of a conservation easement restricting future development of the sending site.

1.3 Grantor is the owner in fee simple of approximately \_\_\_ acres of real property located in Snohomish County, Washington, more particularly described in Exhibit A attached to this Easement Agreement and incorporated herein by this reference (hereinafter, “Protected Property”). Grantor submitted an application to Snohomish County to obtain TDR certificates (hereinafter, “TDR Certificate Application”) for the Protected Property on \_\_\_\_\_. The legal description of the Protected Property contained in Exhibit A encompasses the entire sending site that was the subject of the TDR Certificate Application.

1.4. The County issued a TDR Certificate Letter of Intent on \_\_\_\_\_. In the letter, the County agreed to issue Grantor \_\_\_\_\_ Certificates of Transferable Development Rights, to be numbered \_\_\_\_\_, provided that Grantor grant a conservation easement on the Protected Property to Snohomish County consistent with the requirements of chapter 30.35A SCC.

1.5 As of the date of this Easement Agreement, the following dwelling units are in existence on the Protected Property, as described in the TDR Certificate Application: \_\_\_\_\_ (collectively, the “Pre-Existing Residences”).

1.6 Pursuant to RCW 64.04.130 and RCW 84.34.220, the Washington legislature has authorized counties and other governmental entities to hold or acquire development rights, easements, covenants, restrictions, or other similar rights constituting less than the fee simple to, among other things, protect, preserve, limit the future use of, or conserve for open space purposes, any land or improvement on the land.

1.7 Subject to the specific terms of this Easement Agreement, Grantor and Grantee intend and have the common purpose of placing restrictions on future development of the Protected Property, which shall run with the land and bind the Protected Property in perpetuity.

## **2. PURPOSE AND INTERPRETATION**

The purpose of this Easement Agreement is to conserve natural resource and open space lands for the use and enjoyment of future generations by restricting development of the Protected Property through the transfer of development rights from the Protected Property to lands considered more appropriate for development. The Parties intend that this Easement Agreement be interpreted in a manner consistent with its purpose.

### **3. CONSERVATION EASEMENT**

For the reasons stated above, to permit the transfer of certified development rights from the Protected Property, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants and conveys to Grantor a perpetual, appurtenant easement in gross over, under, across and upon the Protected Property (hereinafter, "Conservation Easement"). The Conservation Easement consists of the relinquishment of certain development rights, as more fully described in section 4 below (the "Development Rights"), and certain restrictive covenants made by Grantor, as more fully described in section 5 below (the "Restrictive Covenants"). The Restrictive Covenants are hereby severed from Grantor's fee title and conveyed to Grantee, as the beneficiary of the Conservation Easement. The Conservation Easement touches and concerns the Protected Property and shall run with the Protected Property in perpetuity.

### **4. DEVELOPMENT RIGHTS**

The following development rights (collectively, the "Development Rights") are hereby severed from Grantor's fee interest in and to the Protected Property and transferred to the holder of Certificates of Transferable Development Rights to be issued by Snohomish County pursuant to the TDR Certificate Letter of Intent issued on \_\_\_\_\_, pursuant to SCC3.35A.050:

- (i) The right to subdivide the Protected Property, whether by long or short subdivision.
- (ii) The right to alter or adjust any boundary lines of or pertaining to the Protected Property.
- (iii) The right to construct any new dwelling unit on the Protected Property except for the following:
  - (a) Accessory apartments that are subordinate to Pre-Existing Residences and that otherwise are consistent with the applicable provisions of the SCC;
  - (b) Farm worker dwellings that are subordinate to Pre-Existing Residences and that otherwise are consistent with the applicable provisions of the SCC; and
  - (c) Temporary dwellings that are subordinate to Pre-Existing Residences and that otherwise are consistent with the applicable provisions of the SCC.

Grantor voluntarily relinquishes the Development Rights for all time, notwithstanding any future changes that may occur to the zoning of the Protected Property or to other land use laws applicable to the Protected Property. Grantor may transfer and convey any or all of the Certificates of Transferable Development Rights described in section 1.4 of this Easement Agreement consistent with chapter 30.35A SCC.

## **5. RESTRICTIVE COVENANTS**

As part of the Conservation Easement, Grantor makes the following covenants to Grantee, which shall run with the Protected Property and bind Grantor and Grantor's successors in title for all time:

- (i) Grantor shall not attempt to exercise any of the Development Rights relinquished in section 4 of this Easement Agreement.
- (ii) Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep, and maintenance of the Protected Property.
- (iii) Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property.

## **6. RIGHTS RETAINED BY GRANTOR**

As fee owner of the Protected Property, Grantor retains and reserves for itself, its successors and assigns, all rights to possess, use and enjoy the Protected Property in any manner consistent with the Conservation Easement, this Easement Agreement, and applicable law. These rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Protected Property and the right to sell, lease or otherwise transfer the Protected Property to anyone the Grantor chooses, subject to section 11 of this Easement Agreement. Grantor may, consistent with applicable provisions of the SCC, maintain any Pre-Existing Residences.

## **7. ENFORCEMENT AND INSPECTION**

Grantee has the right, but not the obligation, to enforce the Easement Agreement. To fulfill this responsibility, Grantor further grants to Grantee the following rights:

- (i) Grantee shall have the right to enter the Protected Property for the purpose of inspecting it for alleged violations of the Conservation Easement when reasonable advance notice is given to the Grantor. Additionally, Grantee shall have the right to enter the Protected Property once a year, at a mutually agreed time, for the purpose of monitoring compliance with the Conservation Easement.

- (ii) Grantee may use any available legal or equitable remedy to ensure compliance with the Conservation Easement, including but not limited to seeking injunctive relief and/or specific performance requiring the Grantor to cease and desist all activity in violation of the Conservation Easement and to return the Protected Property to its condition prior to any such activity. Grantee shall give the Grantor written notice of any violation by U.S. mail. The Grantor shall have thirty (30) days from the deposit of the written notice in the U.S. mail in which to take corrective action before Grantee may commence any legal action.

## **8. NO ACCESS BY GENERAL PUBLIC**

This Easement Agreement does not create any right of entry or access in favor of the general public in, on, over or to any portion of the Protected Property.

## **9. SUBORDINATION OF MONETARY ENCUMBRANCES**

At the time of conveyance of the Conservation Easement, the Protected Property is subject to a [mortgage/deed of trust/other lien] dated \_\_\_\_\_, and recorded under Snohomish County Auditor's File No. \_\_\_\_\_ (hereinafter, "Monetary Encumbrance"). The beneficiary of the Monetary Encumbrance agrees, by affixing its signature to this Easement Agreement, to subordinate its rights in the Protected Property to the Conservation Easement to the extent necessary to permit Grantee to enforce the purpose of the Easement Agreement in perpetuity and to prevent any modification or extinguishment of the Conservation Easement by exercising any rights of the beneficiary under the Monetary Encumbrance.

## **10. INDEMNIFICATION**

This Easement Agreement does not grant the Grantee any possessory interest in or to the Protected Property. Nor does the Easement Agreement provide the County with any right to direct, manage, control or supervise the use of or activities conducted on the Protected Property. Instead, all such rights remain with Grantor. Accordingly, Grantor agrees, to hold harmless, indemnify, and defend the Grantee from and against all liabilities, penalties, costs, losses, damages, claims, or judgments in any way connected to injury to or the death of any person, or damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property (except to the extent the same is due to the negligence or wrongful act of Grantee).

## **11. TRANSFER OF THE PROTECTED PROPERTY**

Grantor agrees to: (1) incorporate by express reference the terms of this Easement Agreement in any deed or other legal instrument by which it divests itself of any interest

in all or a portion of the Protected Property; and (2) describe the Conservation Easement in, and append it to, any executor contract for the transfer of any interest in the Protected Property. Written notice of the transfer, together with any conveyance document, shall be provided to Grantee within thirty (30) days of the date of transfer. The failure of the Grantor to perform any act required by this section shall not impair the validity of the Easement Agreement or limit its enforceability in any way.

**12. ASSIGNMENT**

Grantee shall have the right, at any time and in its sole discretion, to assign and transfer its interest in and to the Conservation Easement to any entity that is then-authorized by Washington law to hold the beneficiary's interest in and to the Conservation Easement. Any such assignment shall be in writing, and shall be duly recorded in the real property records of Snohomish County, Washington.

**13. FUTURE CHANGE IN CIRCUMSTANCES**

The parties intend for the conservation purposes of this Easement Agreement to be carried out forever. Grantor acknowledges and agrees that Grantor has received Certificates of Transferable Development Rights for the future development potential of the Protected Property. Accordingly, notwithstanding the occurrence of any future events or changes in circumstance that might otherwise provide a basis for termination of this Easement Agreement at law or in equity (including but not limited to economic hardship on the part of Grantor or an unanticipated increase in value of the Conservation Easement granted by this Easement Agreement), this Easement Agreement shall nonetheless be upheld and liberally construed to accomplish its objectives if at all possible. If circumstances arise in the future that render the purposes of this Easement Agreement impossible to accomplish under any interpretation of this Easement Agreement, then Grantor or Grantee may seek the termination and extinguishment of this Easement Agreement and the Conservation Easement granted by this Easement Agreement by judicial proceedings in a court of competent jurisdiction.

**14. NOTICES**

Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to another party under the terms of this Easement Agreement shall be in writing and either served at or mailed to:

Grantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Grantee: Snohomish County Department of Planning and  
Development Services  
Attn: TDR Program Manager  
3000 Rockefeller, M/S #604  
Everett, WA 98201

Notwithstanding section 15.2 below, any party may designate a new contact name or address by providing written notice to the other party.

## **15. GENERAL PROVISIONS**

15.1 Recordation. Grantee shall record this Easement Agreement in the Office of the Snohomish County Auditor and may re-record it at any time.

15.2 No Alteration or Amendment. If circumstances arise under which an amendment to or modification of this Easement Agreement would be appropriate, Grantor and Grantee may amend the Easement Agreement by written instrument, properly executed, acknowledged and recorded as long as the amendment or modification does not diminish the effectiveness of this Easement Agreement in accomplishing its conservation purposes.

15.3 Controlling Law. The interpretation or performance of this Easement Agreement shall be governed by the laws of the State of Washington. Venue for any dispute involving this Easement Agreement shall be the Superior Court in and for the County of Snohomish, State of Washington.

15.4 Rules of Construction.

15.4.1 The terms “Grantors” and “Grantee,” wherever used in this Easement Agreement, and any pronouns used in their place, shall be held to mean and include respectively the above-named Grantors, their personal representatives, heirs, successors, and assigns, and the above-named Grantee, its personal representatives, successors and assigns.

15.4.2 The words “or” and “and” shall be read in the conjunctive and not in the disjunctive.

15.4.3 References in this Easement Agreement to chapters or sections of the Snohomish County Code or the Revised Code of Washington shall be deemed to include any amendments thereto which are adopted following execution of this Easement Agreement, provided that such amendments are not contrary to the purposes of this Easement Agreement. Amendments to code chapters or sections referenced herein shall not







**GRANTEE SNOHOMISH COUNTY:**

\_\_\_\_\_  
By: \_\_\_\_\_

Its: Director of the Snohomish County  
Department of Planning and  
Development Services

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SNOHOMISH )

I, \_\_\_\_\_ certify that I know or have satisfactory evidence that \_\_\_\_\_ 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 Director of the Department of Planning and Development Services of Snohomish County, to be the free and voluntary act of such party 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.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.  
My Commission Expires: \_\_\_\_\_.



**EXHIBIT A**

**LEGAL DESCRIPTION**