



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 6, 2009

Ordinance 16676

Proposed No. 2009-0446.1

Sponsors Dunn

1 AN ORDINANCE authorizing the use of the King County
2 Agricultural Conservation Easement: Deed and Agreement
3 Relating to Development Rights by the farmland
4 preservation program.

5

6 STATEMENT OF FACTS:

7 1. Ordinance 4341, passed by the county council on June 18, 1979, called
8 for an election to submit to the voters Proposition One: Farm and Open
9 Space Bonds. The voters approved the proposition and authorized the
10 issuance of \$50,000,000 in bonds to acquire development rights on
11 selected farmlands throughout King County. These and other acquisitions
12 of farmland development rights have been implemented under King
13 County's farmland preservation program ("FPP").

14 2. In the early 1980s, in the course of acquiring the development rights
15 called for through Ordinance 4341, the council passed a series of
16 additional ordinances authorizing the acquisition of development rights on
17 specific farmlands and approving a form of conveyance entitled Deed of

18 and Agreement Relating to Development Rights (" the deed and
19 agreement"), which granted development rights to King County and which
20 placed on subject properties restrictive covenants that specified allowable
21 and prohibited uses and activities on the properties.

22 3. Since the early 1980s, one amendment to the deed and agreement has
23 been authorized by the council. Ordinance 15221 authorized additional
24 covenants in the revised deed and agreement required by a federal funding
25 source grantee, which was the federal Farm and Ranch Lands Protection
26 Program, which provided grant funds to King County for additional
27 purchases of farmland development rights.

28 4. From the time the FPP was established, agriculture in the county has
29 undergone significant changes. Regional socioeconomic factors, such as
30 increased land prices and costs of living, challenges in securing and
31 appropriately providing for required labor, potentially conflicting land
32 uses practices, and increased demand for water and water rights all have
33 potential adverse impacts on the long-term viability of farming in King
34 County and the ability to keep FPP properties in active farming.

35 5. While these forces present challenges to preserving and promoting
36 King County's farming tradition, other opportunities have emerged to
37 promote local farming in new ways. Most notably, demand for market
38 crops and value-added products (such as jams and ciders) has increased
39 dramatically and new means have emerged to allow farmers access to
40 consumers throughout the Puget Sound area and beyond. Recent changes

41 to the King County Code have supported value-added processing and
42 direct marketing of farm products; however, farmers whose properties are
43 enrolled in the FPP may be unable to take full advantage of these recent
44 code changes.

45 6. For the past several years, the agriculture commission has been
46 working in cooperation with King County FPP staff to assess and respond
47 to the challenges and new opportunities facing farmers in the county. The
48 commission has determined that changes to the covenants in the deed and
49 agreement are needed to ensure that requirements are appropriate,
50 adequate, and clear in order to protect and promote active farming in King
51 County now and into the future.

52 7. The Washington state Farmland Preservation Program is a new source
53 of funding for acquiring development rights on agricultural lands. The
54 Washington state Farmland Preservation Program requires that additional
55 provisions and restrictions be included in the document conveying the
56 development rights when its funds are used for the purchase of such rights.
57 These provisions and restrictions, along with additional new provisions
58 relating to the federal Farm and Ranch Lands Protection Program, are also
59 proposed for inclusion in the deed and agreement, to be used when
60 funding from these sources is utilized. These added provisions and
61 restrictions are not inconsistent with the restrictions that have been
62 imposed on acquisitions utilizing funding generated by the 1979
63 Farmlands and Open Space Bonds initiative.

64 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

65 SECTION 1. The King County council hereby authorizes the use of the King
66 County Agricultural Conservation Easement: Deed and Agreement Relating to
67 Development Rights, in substantially the form of Attachment A to this ordinance, for use
68 by the farmland preservation program for the acquisition or the donation of farmland
69 development rights, as these rights are defined in K.C.C. 26.04.020.

70 SECTION 2. The King County council hereby authorizes the use of the King
71 County Agricultural Conservation Easement: Deed and Agreement Relating to
72 Development Rights as a substitute set of restrictions and covenants in place of those
73 contained in the original deed and agreement or the revised deed on properties currently
74 enrolled in the farmland preservation program, upon agreement of the property owner,
75 the farmland preservation program on behalf of the county as grantee, and any other
76 grantees, provided that there will be no change in the number of reserved dwelling units
77 or in the amount of permitted nontillable surface from that allowed in the original deed
78 and agreement or the revised deed.

79 SECTION 3. Farmland development rights that are placed under the King
80 County Agricultural Conservation Easement: Deed and Agreement Relating to

81

82 Development Rights shall be held by the county in trust on behalf of the citizens of the
83 county and maintained as specified in K.C.C. 26.04.080.

84

Ordinance 16676 was introduced on 9/21/2009 and passed by the Metropolitan King County Council on 10/5/2009, by the following vote:

Yes: 9 - Mr. Constantine, Mr. Ferguson, Ms. Hague, Ms. Lambert, Mr. von Reichbauer, Mr. Gossett, Mr. Phillips, Ms. Patterson and Mr. Dunn

No: 0

Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Dow Constantine, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 8th day of October, 2009.



Kurt Triplett, County Executive

Attachments A. King County Agricultural Conservation District Easement: Deed and Agreement Relating to Development Rights

RECEIVED
2009 OCT -8 PM 2:07
CLERK
KING COUNTY COUNCIL

KING COUNTY AGRICULTURAL CONSERVATION EASEMENT:

**DEED AND AGREEMENT RELATING TO
DEVELOPMENT RIGHTS**

THIS DEED AND AGREEMENT RELATING TO DEVELOPMENT RIGHTS entered into this _____ day of _____, 20__, **BY AND BETWEEN (Enter name(s) of Grantor(s))**

hereinafter referred to as “Grantor(s),” **AND KING COUNTY, a political subdivision of the State of Washington** hereinafter referred to as {“Local”} “Grantee” {**Insert if the United States is a Grantee:** and the **United States of America**, acting by and through the United States Department of Agriculture, Natural Resources Conservation Service, on behalf of the Commodity Credit Corporation, hereinafter referred to as the “United States”. }

[Insert THIRD PARTY BENEFICIARIES, as appropriate: Each of the following third party beneficiaries (collectively the “Beneficiaries” and individually the “Beneficiary”) has certain rights hereunder, including third party rights of enforcement: The State of Washington, by and through the Recreation and Conservation Office (“RCO”); **and/or** the United States of America, acting by and through the United States Department of Agriculture, Natural Resources Conservation Service on behalf of the Commodity Credit Corporation, hereinafter referred to as the “United States.”]

WHEREAS:

The Grantors are the present owners of the lands described in Exhibit A (the “Protected Property”) and graphically depicted in the Site Plan (Exhibit B); said Protected Property includes Water Rights as described in Exhibit C; all of which exhibits are attached hereto and incorporated herein by reference.

King County and the Grantors **[Insert as appropriate:** and the State of Washington **and/or** the United States **has/have]** mutual interests in preventing the conversion of agricultural lands to non-agricultural uses and it is the purpose of this Deed and Agreement Relating to Development Rights (“Deed and Agreement” also sometimes referred to herein as “Conservation Easement”) to protect the prime farmland soils and to retain the agricultural viability of the Protected Property.

The Grantors recognize that the Protected Property is Farm and Agricultural Land as defined in RCW 84.34.020(2) **[Omit if State funding is used:** or Farm and Agricultural Conservation Land as defined in RCW 84.34.020(8)] and that it possesses agricultural soils as well as having other characteristics, referred to herein as “Conservation Values”, that make it very suitable for the commercial production of agricultural products. The Protected Property also contributes natural, open space, ecological, habitat, and scenic values, referred to herein as “Open Space Values”, which are of importance to the Grantors, the Grantee{s}. **[Insert as appropriate:** the people of the

ATTACHMENT A

47 State of Washington] and the citizens of King County.

48 The Grantors desire to cooperate with the Grantee{s} **[Insert as appropriate:** and the
49 Beneficiary/Beneficiaries] in preserving land devoted to agricultural and open space uses. The
50 characteristics of the Protected Property are documented in an inventory of relevant features of the
51 Protected Property, dated _____, 20__ and located in a file entitled Baseline
52 Documentation on file at the offices of the {Local} Grantee and incorporated herein by this
53 reference. The Baseline Documentation consists of reports, maps, photographs, surveys of known
54 cultural sites and other documentation that provide, collectively, an accurate representation of the
55 Protected Property as of the date of this Deed and Agreement and which are intended to serve as
56 an objective information baseline for monitoring compliance with the terms of this Deed and
57 Agreement.

58 The Grantors are willing to grant and convey to the {Local}Grantee **[Omit if United States is**
59 **not a Grantee:** and the United States] the Development Rights in the Protected Property as such
60 rights are defined in King County Ordinance No. 4341 (said rights being the interest in and the
61 right to use and subdivide land for any and all residential, commercial, and industrial purposes and
62 activities which are not incident to agricultural and open space uses), on the terms and conditions
63 and for the purposes hereinafter set forth. The Grantee{s} is {are} willing to purchase the
64 Development Rights in the Protected Property and accept this instrument of conveyance.

65 The {Local} Grantee has determined that the acquisition by the {Local} Grantee of Development
66 Rights in Farmland and Open Space Land will benefit the public through the preservation of
67 property devoted to agricultural and open space uses.

68 **[Insert if State funding is used:** Permanent protection of the Protected Property will further
69 the purposes of the Washington State Farmlands Preservation Account (FPA) established under
70 RCW 79A.15.130(1), which provides that moneys appropriated to the FPA “must be distributed
71 for the acquisition and preservation of farmlands in order to maintain the opportunity for
72 agricultural activity upon these lands.” The legislatively declared policies of the State of
73 Washington in the Washington State Open Space Tax Act, Chapter 84.34 RCW (OSTA),
74 provide that “it is in the best interest of the state to maintain, preserve, conserve, and otherwise
75 continue in existence adequate open space lands for the production of food, fiber and forest
76 crops, and to assure the use and enjoyment of natural resources and scenic beauty for the
77 economic and social well being of the state and its citizens.” Under the OSTA, lands eligible for
78 preferential real property tax treatment include lands such as the subject Protected Property
79 where the preservation in its present use would conserve and enhance natural resources and
80 promote conservation of soils. Pursuant to this legislative directive, King County has adopted an
81 Open Space Tax Program, Ordinance No.1076, as amended, that recognizes the importance of
82 and provides preferential tax treatment for the production of food and fiber crops, and to assure
83 the use and enjoyment of natural resources and scenic beauty for the economic and social well-
84 being of the county and its citizens.]

85 **[Insert if State funding is used:** These Development Rights are acquired in part with a grant
86 from RCO pursuant to that certain grant agreement **[insert grant agreement number]** between
87 RCO and {Local} Grantee dated _____ (“RCO Grant Agreement”).]

88 **[Insert if federal funding is used:** Part of the funds for the purchase of these Development
89 Rights is being provided by the Farm and Ranch Lands Protection Program (FRPP), 16 USC
90 3838h and 3838i. Under the FRPP, the Secretary of Agriculture acting through the Natural
91 Resources Conservation Service (NRCS), on behalf of the Commodity Credit Corporation,
92 purchases Conservation Easements and other interests in land on behalf of the United States for

93 the purpose of protecting topsoil from conversion to non-agricultural uses.]

94 The grant and conveyance of Development Rights by the Grantors to the Grantee{s} will
95 preserve the Protected Property for activities consistent with agricultural and open space uses in
96 perpetuity in accordance with the specific terms and conditions hereinafter set forth.

97 Grantor and Grantee{s} have agreed that, in order to maintain the opportunity for the commercial
98 production of agricultural products upon the Protected Property and to protect the Open Space
99 Values of the Protected Property, the Development Rights that are granted and conveyed in this
100 Deed and Agreement include the right to enforce the use of any and all water rights appurtenant to
101 the Protected Property (Water Rights). This term, Water Rights, includes any and all of the rights
102 associated with the historical and beneficial use of any of the embankments, flumes, head gates,
103 measuring devices or any other structures that are appurtenant to those Water Rights, together with
104 all easements and rights of way therefore. The Water Rights are bound by and permanently
105 subject to the covenants, terms and conditions contained in this Deed and Agreement.

106 The conveyance and preservation of the Development Rights by the Grantors to the Grantee{s}
107 furthers the objectives of the King County Comprehensive Plan to ensure the conservation and
108 productive use of the County’s natural resource lands and is responsive to the Washington State
109 Growth Management Act as it serves to retain open space, encourages the conservation of
110 productive agricultural lands, discourages incompatible uses of these lands and maintains and
111 enhances natural resource-based industries occurring thereon.

112
113 **NOW THEREFORE WITNESSETH**, that the Grantors, for and in consideration of
114 _____ **DOLLARS** lawful money of the United States of America, paid
115 to the Grantors by the Grantee{s}, the receipt whereof is hereby acknowledged, and the Grantors
116 being therewith fully satisfied, do by these presents grant, bargain, sell, transfer and convey unto
117 the Grantee{s} forever all Development Rights in respect to the Protected Property in order to
118 carry-out the aforementioned purposes, subject only to those defects and/or encumbrances (if any)
119 identified on Exhibit D (collectively, “Permitted Exceptions”), hereby perpetually binding the
120 Protected Property to the restrictions limiting permitted activities to agricultural and open space
121 uses as specifically delineated in the covenants, terms, and conditions contained herein, and do
122 also grant such interests, rights and easements, make such covenants, and subject the Protected
123 Property to such servitudes as are necessary to bind the Protected Property in perpetuity to such
124 restrictions. This conveyance is a conveyance of an interest in real property under the provisions
125 of RCW 64.04.130.

126 The Grantors and Grantee{s} hereby agree that the Protected Property shall be bound by and
127 permanently subject to the following restrictive covenants, terms, and conditions. None of these
128 covenants, terms, and conditions shall be construed as allowing a use that is not otherwise
129 permitted by applicable state and local laws, codes, standards, and ordinances. Grantor shall
130 conduct all reserved and permitted uses and activities under this Deed and Agreement so as to
131 meet all requirements of federal, state and local statutes, rules, and regulations as they may be
132 amended from time to time.

133
134
135 **RESTRICTIONS ON USE OF THE PROTECTED PROPERTY**

- 136
137 **I. Uses Restricted to Agricultural and Open Space Uses; Agricultural and Open Space**
138 **Uses Defined.**

139
140 Use of the Protected Property is permanently restricted to solely agricultural and open space
141 uses. The Grantee{s} strongly encourages (use singular if United States is a Grantee) the
142 Grantor to farm the Protected Property or to lease the Protected Property for farming. Such
143 uses shall be carried out in accordance with applicable law and in compliance with the
144 purpose and terms of this Deed and Agreement.

145
146 The Protected Property must be managed or farmed under a Farm Management Plan, also
147 sometimes referred to herein as a “Conservation Plan”, as it exists as of the date of this
148 agricultural conservation easement and as may be amended or revised in the future. Said
149 Farm Management Plan is as defined in King County Administrative Rule PUT 8-21 (PR),
150 or its successor, and approved by an agency or agencies designated by {Local} Grantee, by
151 which the Protected Property is maintained in a condition capable of supporting current
152 and/or future commercially viable agriculture. A copy of the Farm Management Plan shall
153 be kept on file at the offices of the Grantee, specifically the office that houses the King
154 County Farmland Preservation Program.

155
156 A. “Agricultural uses,” as used herein, means:

- 157 (1) The growing, raising, and production of horticultural and agricultural crops,
158 including, but not limited to, vegetables, berries, other fruits, cereal grains,
159 herbs, hay and the processing and marketing, for consumption off-premises, of
160 such crops and products. Although intended to support agricultural activity on
161 the Protected Property, such processing and marketing may include agricultural
162 crops from other properties provided such activity serves to maintain the
163 economic viability of agricultural operations on other farmlands in King County
164 and provided that the amount of such activity is approved in writing by the
165 {Local} Grantee **[Insert if State funding is used:** and by the State of
166 Washington, by and through the RCO]. On-premises tasting and sampling of
167 horticultural and agricultural crops is permitted if necessary for the performance
168 of processing and marketing activities that are otherwise allowed herein.
169 (2) All forms of animal husbandry, including the processing and marketing for off-
170 premises consumption, of the animals or their products. Although intended to
171 support agricultural activity on the Protected Property, such processing and
172 marketing may include animal products from other properties provided such
173 activity serves to maintain the economic viability of agricultural operations on
174 other farmlands in King County and provided that the amount of such activity is
175 approved in writing by the {Local} Grantee **[Insert if State funding is used:**
176 and by the State of Washington, by and through the RCO]. On-premises tasting
177 and sampling of animals or their products is permitted if necessary for the
178 performance of processing and marketing activities that are otherwise allowed
179 herein.
180 (3) Uses that are consistent with the classification as “Farm and Agricultural Land”
181 as defined in RCW 84.34.020(2).
182 (4) Agricultural uses do not include the primary use of the Protected Property as a
183 site for processing and/or marketing agricultural crops and animal products as
184 these activities must be secondary to the use of the Protected Property for the

185 growing, raising, and production of horticultural and agricultural crops and/or all
186 forms of animal husbandry.

187 (5) Infrastructure and facilities, such as manure digesters or wind turbines, that
188 support and/or enhance the agricultural use of the Protected Property, are
189 permitted, provided that the predominate use of the property and the majority of
190 its area that is suitable for agricultural production is used for the growing or
191 raising of agricultural crops and/or animal products. Infrastructure and facilities,
192 such as manure digesters, that utilize agricultural products, must use products
193 that are produced on-site, but may combine those products with products or
194 materials produced off-site, provided that such activity is approved in writing by
195 the {Local} Grantee[**Insert if State funding is used:** and by the State of
196 Washington, by and through the RCO]. It is the intent of this provision to
197 promote the economic viability of agricultural operations on the Protected
198 Property and on other farmlands in King County.

199
200 B. "Open space uses," as used herein, means:

- 201 (1) Agricultural uses as defined above;
- 202 (2) Non-agricultural uses that conserve and enhance natural, scenic, or designated
203 historic resources on the Protected Property and that do not permanently
204 compact, remove, sterilize, pollute, or otherwise impair the use of the soil on the
205 Protected Property for the raising of horticultural or agricultural crops.

206
207 Neither open space nor agricultural uses include the following: commercial and industrial
208 activities that are unassociated with agriculture; the construction, habitation, or other use of
209 a dwelling unit and/or farm worker housing, except to the extent such use is specifically
210 reserved in this Deed and Agreement; placement, construction or expansion of buildings,
211 structures or roads for non-agricultural uses; restaurants or other establishments primarily
212 intended for the consumption of food or beverages; the construction or use of golf courses,
213 parking lots unassociated with agricultural uses, zoos, kennels, catteries, athletic fields,
214 campgrounds, or vehicle raceways or animal raceways other than those principally used for
215 the exercise of animals grown, raised, or produced on the Protected Property. Agricultural
216 and open space uses do not allow or include the conversion of Protected Property to fish or
217 wildlife habitat, unless such conversion will directly benefit the agricultural use of the
218 Protected Property as approved in writing by the {Local} Grantee [**Insert if State funding is**
219 **used:** and by the State of Washington, by and through the RCO] or unless the area is
220 designated in the Baseline Documentation as being available for such conversion. Open
221 space uses may include trails for non-motorized use by the public.

222
223 **II. Dwelling Units**

224
225 "Dwelling Unit," as used herein, means: A permanent or mobile structure designed and used for
226 single-family residential occupancy.

227
228 A. **Reservation of Dwelling Unit(s).** The Grantors reserve the right to the use of (may be
229 zero) __single-family dwelling units(s). The location(s) of all reserved dwelling units,
230 both those existing on the Protected Property at the date of this Deed and Agreement

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231 and those which are reserved but which do not exist on the Protected Property at the
232 date of this Deed and Agreement, are shown on Exhibit B as the building envelope(s)
233 within which the aforementioned reserved dwelling units must be located. Grantor
234 may not change the location of any building envelope(s), as shown on Exhibit B,
235 without the express written permission of the {Local} Grantee and of the Beneficiaries,
236 if any.

237
238 No more than the number of reserved dwelling units stated above and depicted on
239 Exhibit B as of the date of this Deed and Agreement will be permitted, regardless of
240 whether the Protected Property is subdivided or its boundaries are altered by the
241 Grantor or by any successor in interest of the Grantor. If the Protected Property is
242 subdivided, or its boundaries altered, reference to this Deed and Agreement must be
243 shown on the map of the subdivided, or altered property and Exhibit B must be
244 recorded as part of the subdivision or alteration so that any future conveyance or
245 change in ownership of the Protected Property shall be explicitly subject to and
246 governed by Exhibit B.

247
248 If a portion of the Protected Property is conveyed separate from the whole, the
249 conveyance instrument shall state the number of reserved dwelling units that are
250 allocated to that portion, and Exhibit B, showing the building envelope(s) within which
251 the reserved dwelling units are or will be located, shall be attached to the conveyance
252 instrument and recorded with it.

253
254 Failure to record Exhibit B upon subdivision, boundary alteration, or upon the
255 conveyance of a portion of the Protected Property, shall not invalidate or otherwise
256 affect the restriction of the total number of reserved dwelling units and their location(s)
257 on the Protected Property.

258
259 **[If Grantor chooses to limit the size of the reserved dwelling units, insert the**
260 **following wording:** The total living space square footage of any new or remodeled
261 reserved dwelling unit shall not exceed _____ square feet which is 150% of the median
262 size of dwelling unit living space in King County’s Agricultural Production Districts,
263 as determined by King County Assessor’s records, upon the date of this Deed and
264 Agreement.]

265
266 Reserved dwelling units must be used for the sole purpose of accommodating the
267 Grantors and their successors in interest to the Protected Property, the farm operator, or
268 the families of such persons, or for accommodating on-farm agricultural employees of
269 the owner or operator and their families. Reserved dwelling units cannot be leased to
270 the public-at-large.

271
272 B. “**Accessory Dwelling Unit,**” as used herein means: a separate, complete dwelling unit
273 that is attached to or contained within the structure of a reserved dwelling unit or
274 is contained within a separate structure that is accessory to and on the same legal lot as
275 a reserved dwelling unit. The total living space square footage of an accessory
276 dwelling unit shall not exceed 1,000 square feet unless the accessory dwelling unit is

277 wholly contained within a basement or attic of a reserved dwelling unit. Only one
278 accessory dwelling unit is permitted for each reserved dwelling unit. Property
279 containing an accessory dwelling unit cannot be subdivided or conveyed separately
280 from the property on which the reserved dwelling unit is located unless the accessory
281 dwelling unit is removed prior to such action.

282
283 The use of accessory dwelling units shall be limited to the Grantors and their
284 successors in interest to the Protected Property, the farm operator, or the families of
285 such persons, or for accommodating on-farm agricultural employees of the owner or
286 operator and their families. Accessory dwelling units cannot be leased to the public-at-
287 large.

288
289 C. **“Agricultural Employee Dwelling Unit,”** as used herein means: a dwelling unit in
290 which the total living space square footage does not exceed 1,000 square feet and
291 which is used to house agricultural employees who are employed to work on the
292 Protected Property. Such agricultural employee dwelling units are not included in the
293 number of dwelling units reserved nor are they considered to be accessory dwelling
294 units. If the primary use of the Protected Property changes to a non-agricultural use, all
295 agricultural employee dwelling units shall be removed. Property containing
296 agricultural employee dwelling units cannot be subdivided or conveyed separately from
297 the rest of the Protected Property unless said structures are permanently removed prior
298 to such action. Agricultural employee dwelling units may only be occupied by
299 agricultural employees who are employed to work on the Protected Property.

300
301 The location(s) of accessory dwelling units and of agricultural employee dwelling units
302 that exist on the Protected Property upon the date of this Deed and Agreement, are
303 included within a building envelope as shown on Exhibit B.

304
305 The Grantor must obtain written permission from the {Local} Grantee prior to the
306 construction or installation of any accessory dwelling units or agricultural employee
307 dwelling units not existing on the Protected Property upon the date of this Deed and
308 Agreement. Nothing herein shall be deemed to waive the requirement to obtain any
309 required permits from the agency of the appropriate government responsible for issuing
310 development permits. New accessory dwelling units and/or agricultural employee
311 dwelling units must be located within an existing building envelope. Any addition of
312 accessory dwelling units and/or agricultural employee dwelling units shall be shown on
313 an updated Site Plan which has been approved in writing by the {Local} Grantee and
314 which shall be added to the Baseline Documentation on file at the offices of the
315 {Local} Grantee.

316
317 **III. Emergencies.** Grantor may undertake any activities that are necessary to protect health or
318 safety or prevent significant property damage on the Protected Property or are required by
319 and subject to compulsion of any governmental agency; provided, however, that Grantor
320 shall first reasonably attempt to notify {Local} Grantee prior to taking such action. If
321 {Local} Grantee cannot provide consent, with or without conditions, within such time as is
322 reasonable under the circumstances, Grantor may proceed with such action without consent.

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- IV. Further Restriction on Use of the Protected Property.** Potential uses of the Protected Property are limited in that the Grantors, their heirs, successors, and assigns shall only be entitled to use, lease, maintain, or improve the Protected Property for agricultural and open space uses, and they shall comply with the following terms, conditions, restrictions, and covenants, which are permanently binding on the Protected Property:
- A. No subdivision of the Protected Property that reduces any parcel to less than 10 acres **[As appropriate, replace with: 35 acres or, if federal funding is used replace with: _____ (insert number) acres, which is the average size of farms in King County as of the most recent published Census of Agriculture,]** shall be permitted. *[Explanation for subdivision size if no federal funding is used: Parcels may not be subdivided or the minimum size of parcels created by any future subdivision will be restricted to 10 or 35 acres depending on the location of the property; properties in the Lower Green, Upper Green and Sammamish River Valley Agricultural Production Districts (APDs) and those outside of APDs will be restricted to a minimum parcel size of 10 acres, properties in the Snoqualmie River Valley and Enumclaw Plateau APDs will be restricted to a minimum parcel size of 35 acres.]* The Grantor must obtain written permission from the {Local} Grantee and all Beneficiaries, if any, prior to initiating any subdivision or boundary line adjustment. All restrictions imposed by this Deed and Agreement shall survive any subdivision. A boundary line adjustment that combines the Protected Property, or any portion thereof, that is subject to this Deed and Agreement, with property on which the development rights have not been conveyed to King County, is prohibited. Subdivisions or boundary line adjustments which would result in any parcel exceeding the limit on non-tillable surface as specified in Section IV.B. of this Deed and Agreement are prohibited.
 - B. No more than a total of _____ percent **[Insert maximum of 5, minimum of 2]** of the Protected Property or of any parcel thereof resulting from any future subdivision of the Protected Property, boundary line adjustment, or conveyance of a portion of the Protected Property, shall be covered by structures and/or non-tillable surfaces **[Insert as appropriate: and no more than _____ percent [Insert maximum of 5, minimum of 2] of Parcel(s) _____ of the Protected Property or of any parcel thereof resulting from any future subdivision of the Protected Property, boundary line adjustment, or conveyance of a portion of the Protected Property, shall be covered by structures and/or non-tillable surfaces].** *[Explanation: Certain properties or specific parcels within a property may be restricted to less than 5 percent non-tillable surface.]* “Structures” shall include but are not limited to residences, barns, machine sheds, permanent greenhouses, associated structures, retail and processing facilities, surfaced parking areas, surfaced driveways, surfaced roadways, and surfaced pads. Temporary shelter for soil-dependent cultivation of horticultural or viticultural crops is not considered a structure. “Non-tillable surfaces” shall include but are not limited to asphalt, concrete, gravel, and any other cover material not normally associated with cultivation of the soil. Naturally-occurring non-tillable surfaces, such as rock out-crops or bodies of water, shall not be counted against the ___% non-tillable surface limitation. Non-tillable surfaces within public right-of-way or utility easements, that exist upon the date of this conveyance or which are approved in writing by the {Local} Grantee and the Third Party Beneficiaries, if any, subsequent to this Deed and Agreement, shall not be counted against the ___% non-

ATTACHMENT A

369 tillable surface limitation. Prior to the creation of any non-tillable surface, the topsoil on
370 the area so affected shall be removed and used elsewhere on the Protected Property; said
371 requirement is subject to permitting restrictions. Should the amount of non-tillable
372 surface on any parcel as of the date of this Deed and Agreement exceed _____ percent
373 **[Insert maximum of 5, minimum of 2]**, such parcel cannot be sold separately but must
374 remain under the same ownership as other parcels of which the Protected Property is
375 comprised, said parcels being of sufficient size so that, collectively, their total non-
376 tillable surface does not exceed ____ percent **[Insert maximum of 5, minimum of 2]** of
377 their total acreage.

378 C. No mining, drilling, or extracting of oil, gas, gravel, or minerals on or under the
379 Protected Property that breaks the surface of the Protected Property, shall be permitted.
380 Temporary disruption of the Protected Property, not to exceed one acre in total, for the
381 extraction of subsurface materials is permitted only if the extracted materials are used in
382 connection with agricultural activities occurring on the Protected Property. No part of
383 the surface of the Protected Property shall be used for storage or processing of gas, oil,
384 or minerals taken from the Protected Property, other than storage for the private use of
385 the occupants of the Protected Property.

386 D. No subsurface activities, including excavation for permitted underground utilities,
387 pipelines, or other underground installations shall be allowed that cause permanent
388 disruption of the surface of the Protected Property. Temporarily disrupted soil surfaces
389 shall be restored in a manner consistent with agricultural uses, including restoration of
390 the original soil horizon sequence, within one year of when the soils were initially
391 disrupted. **[Insert as appropriate:** Notwithstanding anything in this Section to the
392 contrary, Grantor shall comply with all applicable state and federal laws and shall
393 give notice to and receive consent from {Local} Grantee, in writing, with respect to
394 any alteration of the Protected Property that would have the effect of physically
395 disturbing a known cultural site, a survey of which is included in the Baseline
396 documentation and incorporated herein by this reference.]

397 E. No dumping or storage of solid or liquid waste, or of trash, rubbish, hazardous, or
398 noxious materials shall be permitted. Hazardous materials include explosives,
399 veterinary or medical wastes, radioactive wastes, chemical, biological or petroleum
400 products that are not being used for agricultural purposes and which may pose a
401 substantial present or potential hazard to humans, wildlife or the environment and
402 which, either singularly or in combination, have toxic properties that may cause death,
403 injury or illness or have mutagenic, teratogenic, or carcinogenic properties or are
404 corrosive, explosive, flammable, or may generate pressure through decomposition or
405 other means. However, the temporary storage of waste generated on the Protected
406 Property is permitted so long as such storage is in compliance with all applicable laws.
407 Temporary storage means storage for the duration of not more than one year.
408 Composting of biodegradable materials for on-site application at agronomic rates is
409 permitted, so long as the composting is done in accordance with all applicable laws.
410 Production of compost for sale and/or off-site application must be predominately of
411 biodegradable materials produced on the Protected Property or of biodegradable
412 materials that have been used for agricultural purposes on the Protected Property, and in
413 accordance with all applicable laws. Hazardous or noxious materials shall not include
414 biosolids, herbicides, pesticides, rodenticides, insecticides, and fertilizers applied and

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- 415 maintained in accordance with federal, state and local law.
- 416 F. No activities that violate sound agricultural soil and water conservation management
- 417 practices shall be permitted.
- 418 G. No signs shall be erected on the Protected Property except for the following purposes:
- 419 (1) to state the name of the property and the name and address of the occupant;
- 420 (2) to advertise any use or activity consistent with the agricultural or open space uses as
- 421 herein defined; or
- 422 (3) to advertise the property for sale or rent.
- 423 H. Recreational uses of the Protected Property are limited to passive recreational open
- 424 space uses such as hiking, fishing, horseback riding, in-season hunting and fishing and
- 425 other forms of recreation that do not require site modification to accommodate
- 426 motorized, mechanical or electronic accessories. All forms of developed recreation or
- 427 recreation that adversely impacts the conservation purposes of this Deed and Agreement
- 428 are prohibited.
- 429 I. In order to maintain the ability of the Protected Property to support commercial
- 430 agricultural production, the Grantor shall cooperate with the {Local} Grantee to help
- 431 assure the maintenance of the Water Rights. Grantor shall retain all Water Rights
- 432 necessary for present or future agricultural production on the Protected Property and
- 433 shall not transfer, encumber, lease, sell, abandon, relinquish or otherwise separate, by
- 434 action or inaction, such quantity of Water Rights from title to the Protected Property.
- 435 Grantor shall take affirmative actions to avoid such abandonment, relinquishment, loss
- 436 or forfeiture, including but not limited to the following:
- 437 (1.) Exercising the Water Rights by putting them to any beneficial use that is not
- 438 inconsistent with the terms of this Deed and Agreement in accordance with Chapter
- 439 90.14 RCW;
- 440 (2.) Seeking to place or enroll the Water Rights in the Washington State trust water
- 441 rights program on a temporary basis, provided that any acquisition of the Water Rights
- 442 by the State shall be expressly conditioned to limit its use to instream purposes and its
- 443 duration to a term no longer than 10 years; or
- 444 (3.) Seeking to lease the Water Rights for use on land other than the Protected
- 445 Property for a term no longer than 10 years, with prior written notice to and consent of
- 446 the {Local} Grantee, after obtaining approval in accordance with RCW 90.03.380,
- 447 90.03.383, 90.03.390, or 90.44.100 for a temporary transfer or change of the Water
- 448 Rights; provided, however, that any such lease shall require the lessee to make
- 449 beneficial use of the Water Rights in accordance with Chapter 90.14 RCW and for
- 450 agricultural purposes only (collectively, "Water Rights Maintenance Actions.") If
- 451 Grantor is unable to take the Water Rights Maintenance Actions and the Water Rights
- 452 are under threat of abandonment, relinquishment, loss or forfeiture, Grantor shall
- 453 convey ownership of said Water Rights to {Local} Grantee for {Local} Grantee's use in
- 454 order to maintain the opportunity for commercial agricultural production on the
- 455 Protected Property.
- 456 If Protected Property possessing divisible Water Rights is subdivided, a Water Right
- 457 of sufficient quantity to support any present or future economically viable agricultural
- 458 practice must be allocated to each parcel created by the subdivision. Any
- 459 relinquishment, loss or forfeiture of the Water Rights shall not be deemed or construed
- 460 to be a waiver of {Local} Grantee's rights under this Deed and Agreement or to defeat

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- 461 the purpose of the Deed and Agreement, and shall not otherwise impair the validity of
462 this Deed and Agreement or limit its enforceability in any way.
- 463 J. Unless otherwise prohibited by law, trees may be cut to control insects and disease,
464 prevent personal injury and property damage, obtain wood for personal use, construct
465 fences as permitted herein, and, with advance written permission of {Local} Grantee,
466 maintain grasslands. Except for trees produced as agricultural products, any
467 commercial harvesting of trees shall be conducted in accordance with a King County
468 approved forest stewardship plan prepared by a professional forester and in accordance
469 with state and local regulations. This provision shall not be construed to allow uses
470 otherwise inconsistent with agriculture and open space uses as defined herein.
- 471 K. Existing fences may be repaired or replaced and new fences may be constructed for the
472 purposes described in the Farm Management Plan referenced in this instrument.
- 473 L. Ditches, drainage tiles, and other water conveyance and/or impoundment features may
474 be lawfully installed, repaired and maintained to support and further enhance the
475 agricultural purposes cited in this conveyance.
- 476 M. Construction, installation or relocation of roads and of public or private utilities
477 including communication services and alternative energy facilities over or under the
478 Protected Property, that affect the suitability of the Protected Property for agricultural
479 use, are prohibited, except to the extent necessary to serve the Protected Property and
480 uses permitted by this Deed and Agreement or unless, as specified in Ordinance 4341,
481 the King County Council has found it necessary to convey a road or utility easement for
482 such construction, installation or relocation. **[Insert if State and/or federal funding is
483 used: Should the King County Council find it necessary to convey a road or
484 utility easement for which compensation is required, the compensation received
485 will be distributed between/among the Grantor, Grantee(s) and all Beneficiaries,
486 if any, according to the distribution method specified in this Deed and
487 Agreement in the section titled "Condemnation."]** Grantor may not convey any road
488 or utility easements, including temporary easements, without the express written
489 permission of the {Local} Grantee.
- 490 N. Grantor shall not engage in any use or activity that causes or is likely to cause significant
491 soil degradation or erosion or significant contamination or pollution of any soils or
492 surface or substrate waters on the Protected Property.
- 493 O. The creation, enhancement, restoration or preservation of wetlands, fish or wildlife
494 habitat, or other natural resources for the purpose of, directly or indirectly,
495 compensating for or mitigating resource losses or damages in any way associated with
496 actual or potential impacts of development except for impacts caused by Grantor on the
497 Protected Property ("Compensatory Mitigation") is prohibited on the Protected
498 Property. Compensatory Mitigation includes, but is not limited to, mitigation banking,
499 conservation banking, and any other sale or exchange of mitigation credits based on the
500 creation, restoration, enhancement and/or preservation of such natural resources within
501 the Protected Property.
- 502 P. Home occupations or home industries, as defined in Chapter 21A.06 of the King County
503 Code, or its successor, **[Insert if State funding is used:** which are consistent with the
504 provisions of RCW 84.34.020(2)] and which are subordinate to the use of the Protected
505 Property for agricultural purposes, are permitted, provided that:
506 (1.) The home occupation or home industry must be consistent with the size, scale

- 507 and intensity of the existing agricultural use of the Protected Property at the
 508 date of this Deed and Agreement and must maintain the primacy of and be
 509 subordinate to the use of the Protected Property for agricultural purposes; and
 510 (2.) The home industry or home occupation must adhere to the restrictions
 511 contained in this Deed and Agreement and in Chapter 21A.30 of the King
 512 County Code, or its successor; and
 513 (3.) The home industry or home occupation must be owned and operated by the
 514 property owner or the farm operator; and
 515 (4.) All activities associated with the home occupation or home industry must
 516 remain within the building envelope as depicted on the Site Plan (Exhibit B)
 517 which is attached to this Deed and Agreement; all structures and surfaces
 518 within the building envelope are subject to the limitation on non-tillable
 519 surfaces as is specified in Section IV.B. of this Deed and Agreement; and
 520 (5.) If the home industry is sited in a barn or other agricultural structure, the
 521 property owner must be able to provide verification that the home industry is
 522 subordinate to the use of the Protected Property as a farm; and
 523 (6.) No new structures or surfaces, to be used primarily for the operation of a home
 524 industry or home occupation, shall be constructed or installed on the Protected
 525 Property; and
 526 (7.) Should there be any discrepancy between the covenants and restrictions
 527 contained in this Deed and Agreement and the restrictions on home industries
 528 and occupations contained in the King County Code, the more restrictive of the
 529 two shall prevail.
 530

531 **V. Restriction on Use of the Protected Property to Satisfy Conservation and Open Space**
 532 **Requirements for Development or Use of Other Real Property.** Except as is otherwise
 533 provided below, in the event that an application is made at any time to a federal, state, or
 534 local governmental authority for permission to make use of any other real property including,
 535 but not limited to, real property that is contiguous to any of the Protected Property hereby
 536 restricted, which proposed use is conditioned by such government authority on the existence
 537 of a specified quantity of open space or other restrictions on development, the Protected
 538 Property shall not be used to contribute toward the satisfaction of any such open space
 539 requirement. This restriction shall not apply if the proposed use of the other real property is
 540 an agricultural or open space use, as defined herein.
 541
 542

543 **ADDITIONAL COVENANTS AND AGREEMENTS**
 544

545 The Grantors and Grantee{s} further agree as follows:

546 **Conservation Plan.** The Grantor, his/her heirs, successors, or assigns, shall maintain the Land
 547 and conduct all agricultural operations on the Land in a manner consistent with a Conservation
 548 Plan, also sometime referred to herein as a “Farm Management Plan”, prepared in consultation with
 549 the Natural Resources Conservation Service (NRCS) and which meets the approval standards of
 550 **[Insert if State funding is used:** the State of Washington, by and through the RCO and] any
 551 other agency or agencies as designated by the {Local} Grantee. This Conservation Plan shall be
 552 developed using the standards and specifications of the NRCS Field Office Technical Guide and 7

553 CFR part 12 that are in effect on _____, 20 ____ . However, the Grantor may develop and
 554 implement a management plan that proposes a higher level of conservation and is consistent with
 555 the NRCS Field Office Technical Guide standards and specifications. The {Local} Grantee and the
 556 Beneficiaries, if any, shall have the right to enter upon the Protected Property, with advance notice
 557 to the Grantor, in order to monitor compliance with the Conservation Plan.

558 **[Insert if no federal funding is used:** In the event of noncompliance with the Conservation
 559 Plan, the Grantee shall work with the Grantor to explore methods of compliance and give the
 560 Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If
 561 the Grantor does not comply with the Conservation Plan, the Grantee shall take all reasonable
 562 steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal
 563 action) to secure compliance with the Conservation Plan.]

564 **[Insert if the United States is a Grantee or a Third Party Beneficiary:** In the event of
 565 noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore
 566 methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve
 567 months, to take corrective action. If the Grantor does not comply with the Conservation Plan,
 568 NRCS will inform {Local} Grantee of the Grantor’s noncompliance. The {Local} Grantee shall
 569 take all reasonable steps (including efforts at securing voluntary compliance and, if necessary,
 570 appropriate legal action) to secure compliance with the Conservation Plan following written
 571 notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-
 572 compliance with the Conservation Plan, (b) NRCS has worked with the Grantor to correct such
 573 noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS
 574 regulations.

575 If the NRCS standards and specifications for highly erodible land are revised after the date of this
 576 Deed and Agreement based on an Act of Congress, NRCS will work cooperatively with the Grantor
 577 to develop and implement a revised Conservation Plan. The provisions of this section apply to the
 578 highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program
 579 and are not intended to affect any other natural resources conservation requirements to which the
 580 Grantor may be or become subject.]

581 **Covenant Against Encumbrances.** The Grantors covenant that they have not done or
 582 executed, or allowed to be done or executed, any act, deed, or thing whatsoever whereby the
 583 Development Rights hereby conveyed, or any part thereof, now or at any time hereafter, will or
 584 may be charged or encumbered in any manner or way whatsoever.

585 **Subsequent Liens.** No provisions of this Deed and Agreement should be construed as
 586 impairing the ability of The Grantor to use this Protected Property as collateral for a loan,
 587 provided that any mortgage or lien associated with the loan is subject to or subordinated to this
 588 Deed and Agreement.

589 **Responsibilities of Grantor and Grantee{s} Not Affected.** Other than as specified here, this
 590 Deed and Agreement is not intended to impose any legal or other responsibility on Grantee{s} or
 591 in any way affect any existing obligations of Grantor as the owner of the Protected Property.

592 **No Public Rights Conveyed by Deed and Agreement.** The parties acknowledge that, except
 593 as specifically provided herein. Grantor does not grant, expand or extend any rights to the
 594 general public through this Deed and Agreement, including without limitation, any rights of
 595 public access to on or across. or public use of, the Protected Property.

596 **Remedies.** {Local} Grantee has the right to enforce the terms of this Deed and Agreement and
 597 to prevent and correct or require correction of violations of the terms, conditions, restrictions
 598 and covenants of this Deed and Agreement. {Local} Grantee shall have the right to prevent, or

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599 cause Grantor to prevent, any use of, or activity on, the Protected Property that is inconsistent with
600 the purpose and terms of this Deed and Agreement, including trespasses by members of the public,
601 and shall have the right to undertake or cause to be undertaken the restoration of such areas or
602 features of the Protected Property as may be materially damaged by activities contrary to the
603 provisions hereof. After giving reasonable notice to the possessors of the Protected Property, the
604 {Local} Grantee or its authorized representative shall have the right to enter from time to time onto
605 the Protected Property and into structures located thereon for the sole purposes of inspection and
606 enforcement of the terms, conditions, restrictions and covenants hereby imposed. In addition,
607 {Local} Grantee shall have the right to enter upon the Protected Property, at a mutually agreeable
608 date and time and upon prior notice to Grantor, to inspect the Protected Property after major
609 natural events occur, such as fires, windstorms, and floods. {Local} Grantee shall exercise its
610 access rights in compliance with applicable law and in a manner that will not materially disturb or
611 interfere with Grantor's reserved rights, any other person's lawful use of the Protected Property, or
612 Grantor's quiet enjoyment of the Protected Property.

613 If {Local} Grantee becomes aware of or finds a violation of this Deed and Agreement, {Local}
614 Grantee may at its discretion take any and all appropriate legal action in law or equity and/or
615 pursue administrative remedies under the King County Code (KCC) for violations arising under
616 the provisions of the KCC. Upon discovery of a violation, {Local} Grantee shall notify Grantor
617 in writing of the violation. Except when an ongoing or imminent violation could, as determined
618 by {Local} Grantee, seriously impair the Conservation Values of the Protected Property, {Local}
619 Grantee shall give Grantor written notice of the violation and 30 days to correct it before filing
620 any legal action, including any administrative activity under the KCC.

621 If Grantor fails to cure the violation within 30 days after receipt of a notice of violation,
622 {Local} Grantee may (1) seek enforcement under the provisions of the KCC and/or (2) bring an
623 action in court to enforce the terms of this Deed and Agreement, to enjoin the violation, and to
624 require restoration of the Protected Property to the condition that existed prior to any such
625 injury. Grantor agrees that {Local} Grantee's remedies at law for any violation of the terms of
626 this Deed and Agreement are inadequate and that {Local} Grantee shall be entitled to the
627 injunctive relief described in this Section both prohibitive and mandatory, in addition to such
628 other relief to which {Local} Grantee may be entitled, including specific performance of the
629 terms of this Deed and Agreement, without the necessity of proving either actual damages or the
630 inadequacy of otherwise available legal remedies. All such actions for injunctive relief may be
631 taken without {Local} Grantee being required to post bond or provide other security. Where a
632 court finds that a violation has occurred, Grantor shall reimburse {Local} Grantee for all its
633 expenses incurred in halting and correcting the violation, including but not limited to actual
634 costs of restoration, court costs, and reasonable attorney's fees. In as much as the actual
635 damages to the Agricultural Conservation Value that could result from a breach of this Deed and
636 Agreement by Grantor would be impractical or extremely difficult to measure, the Parties agree
637 that the money damages {Local} Grantee is entitled to recover from Grantor shall be, at {Local}
638 Grantee's election, the higher of (i) the amount of economic gain realized by Grantor from
639 violating the terms of the Deed and Agreement or (ii) the cost of restoring any Agricultural
640 Conservation Values and/or open space values that have been damaged by such violation. In the
641 event {Local} Grantee chooses the second of these two measures, Grantor agrees to allow
642 {Local} Grantee, its agents or contractors, to enter upon the Protected Property and conduct
643 restoration activities.

644 Enforcement of the terms of this Deed and Agreement shall be at the discretion of the {Local}

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645 Grantee, and any forbearance by {Local} Grantee to exercise its rights under this Deed and
646 Agreement in the event of any breach of any terms of this Deed and Agreement by Grantor shall
647 not be deemed or construed to be a waiver by {Local} Grantee of such term or of any of {Local}
648 Grantee’s rights under this Deed and Agreement. No delay or omission by {Local} Grantee in
649 the exercise of any right or remedy upon any breach by Grantor shall impair such right or
650 remedy or be construed as a waiver. Moreover, any failure by {Local} Grantee to discover a
651 violation of this Deed and Agreement or forbearance by {Local} Grantee in exercising its rights
652 under this Deed and Agreement in the event of any violation of its terms by Grantor shall not be
653 deemed a waiver by {Local} Grantee of such rights with respect to any subsequent violation. No
654 waiver or waivers by the {Local} Grantee, or by its successors or assigns, of any breach of a term,
655 condition, restriction, or covenant contained herein shall be deemed a waiver of any subsequent
656 breach of such term, condition, restriction or covenant or of any other term, condition, restriction,
657 or covenant contained herein.

658 **No Alteration or Amendment.** The terms, conditions, restrictions, and covenants contained
659 herein shall not be altered or amended unless such alteration or amendment shall be made with the
660 written consent of the {Local} Grantee [**Insert as appropriate: the United States (if a Grantee**
661 **or Third Party Beneficiary)**] and of [other] Beneficiaries, if any, or their successors or assigns,
662 and any such alteration or amendment shall be consistent with the purposes of King County
663 Ordinance No. 4341, as heretofore or hereafter amended. Any amendment to this Deed and
664 Agreement shall be recorded in the official records of King County, Washington.

665 **Restrictions Binding on Successors and Third Parties.** The Grantors and Grantee{s} agree
666 that the terms, conditions, restrictions, and covenants contained herein shall be binding upon the
667 Grantors, their agents, personal representatives, heirs, assigns, and all other successors in interest
668 to the Protected Property and possessors of the Protected Property, and shall be permanent terms,
669 conditions, restrictions, covenants, servitudes, and easements running with and perpetually binding
670 the Protected Property. Any interests in the Protected Property held or obtained by third parties
671 shall be subordinate to the terms of this Deed and Agreement.

672 **Notice.** Certain provisions of this Deed and Agreement require Grantor to give notice to {Local}
673 Grantee prior to undertaking certain uses and activities (e.g., Sections [**insert reference numbers**
674 **of pertinent Sections**]) for the purpose of affording {Local} Grantee an opportunity to adequately
675 ensure that the proposed use or activity is designed and implemented in a manner that is consistent
676 with the purpose of this Deed and Agreement. Whenever such notice is required, and no other
677 timeline for notice is set forth elsewhere in this Deed and Agreement, Grantor shall provide such
678 notice in writing not less than ninety (90) days prior to the date Grantor intends to undertake the
679 use or activity in question. The notice shall describe the proposed use or activity in sufficient
680 detail to permit {Local} Grantee to make an informed judgment as to its consistency with the terms
681 of the Deed and Agreement. [**Insert if there are Third Party Beneficiaries:** Upon receipt of
682 such notice, {Local} Grantee shall forward a copy to each Beneficiary to this Deed and
683 Agreement.] {Local} Grantee shall provide a written response to the notice in a timely manner.
684 [**Insert if State funding is used: Consent by Third Party Beneficiary Required.** Wherever in
685 the Deed and Agreement {Local} Grantee’s consent is required, such consent is also required of
686 the State of Washington, by and through the RCO as a Third Party Beneficiary to this Deed and
687 Agreement. The RCO shall provide such consent in writing within a reasonable time.]

688 **Consent Not Unreasonably Withheld.** Wherever in this Deed and Agreement a Party’s
689 consent is required, such consent may be withheld only upon a reasonable determination by the
690 consenting party that the action as proposed would be inconsistent with the purpose or terms of

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691 this Deed and Agreement and cannot be modified to make the proposed action consistent with the
692 purpose and terms of this Deed and Agreement. Any consent may include reasonable conditions
693 consistent with the purpose and terms of this Deed and Agreement that must be satisfied in
694 undertaking the proposed action, use, or activity.

695 **Addresses for Notices.** Any notice, demand, request, consent, concurrence, approval, or
696 communication that either party desires or is required to give to the other shall be in writing either
697 served personally or sent by registered mail or overnight courier with proof of delivery, addressed
698 as follows:

699

700 To Grantor: name
701 street address
702 city, state, zip
703

704 To Grantee: name
705 street address
706 city, state, zip
707

708 **[Insert as appropriate:**

709

710 To RCO: name
711 street address
712 city, state, zip
713

714 To NRCS: name
715 street address
716 city, state, zip]
717

718

719 **Transfer of Rights by {Local} Grantee.** The {Local} Grantee agrees that the Development
720 Rights to the Protected Property shall not be sold, given, divested, transferred, or otherwise
721 reconveyed in whole or in part in any manner except as provided in King County Ordinance No.
722 4341, as heretofore or hereafter amended **[Insert as appropriate:** and with the consent of the RCO
723 **(and NRCS)** prior to initiating said transfer of rights. In the event of such transfer, the
724 reimbursement due the {Local} Grantee **[Insert as appropriate:** the United States if a funding
725 contributor] and the Beneficiaries, if any, shall be the percent of the compensation that is equal to
726 the percent of the {Local} Grantee’s **[Insert as appropriate:** the United States’] and the
727 Beneficiary/Beneficiaries’ funding that was originally used to acquire the Development Rights
728 interest as is set forth below in the condemnation provision.] The Grantors, their personal
729 representatives, heirs, successors or assigns, shall be given the first right of refusal to purchase the
730 Development Rights in the Protected Property provided such disposition and reconveyance be
731 lawfully approved.

732 **Subsequent Transfers.** For the purposes of this Section, “Transfer” includes but is not limited
733 to any sale, grant, lease, hypothecation, encumbrance, assignment, conveyance, or any transaction
734 the purpose of which is to effect a sale, grant, lease, hypothecation, encumbrance, assignment, or
735 conveyance. Grantor shall give written notice to the {Local} Grantee of the transfer of any interest
736 in all or a portion of the Protected Property at least thirty (30) days prior to the date of such transfer.

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737 Such notice to {Local} Grantee shall include the name, address, and telephone number of the
738 prospective transferee or such transferee’s representative. Grantor agrees to: (1) incorporate by
739 express reference the terms of this Deed and Agreement in any deed or other legal instrument by
740 which it divests itself of any interest in all or a portion of the Protected Property; and (2) describe
741 this Deed and Agreement in and append it to, any executory contract for the transfer of any interest
742 in the Protected Property. The failure of the Grantor to perform any act required by this Section
743 shall not impair the validity of the Deed and Agreement or limit its enforceability in any way. A
744 party’s rights and obligations under this Deed and Agreement terminate upon the transfer of the
745 party’s interest in the Protected Property or this Deed and Agreement, as the case may be, except
746 that liability for acts or omissions occurring prior to transfer shall survive transfer.

747 **[Insert as appropriate: Succession.** If {Local} Grantee shall cease to exist, then {Local}
748 Grantee’s rights and duties hereunder shall become vested and fall upon RCO, who may then assign
749 **[Insert as appropriate:** with NRCS’s consent, which shall not be unreasonably withheld] {Local}
750 Grantee’s rights and duties hereunder to an organization with a similar mission to that of {Local}
751 Grantee.]

752 **No Merger.** If {Local} Grantee or the Beneficiaries, if any, at some future time, acquire the
753 underlying fee title in the Protected Property, the interest conveyed by this Deed and Agreement
754 will not merge with fee title but will continue to exist and be managed as a separate estate.

755 **Condemnation.** If all or any of the Protected Property is taken by exercise of the power of
756 eminent domain or acquired by purchase in lieu of condemnation, so as to remove the previously
757 acquired Development Rights interest, in whole or in part, Grantor and {Local} Grantee shall act
758 jointly to recover the full value of the interest in the Protected Property subject to that taking or in
759 lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase.

760 **[Insert one of the following:** i) Grantee; ii) Grantee and RCO; iii) {Local} Grantee and the
761 United States; iv) {Local} Grantee, RCO and the United States] shall be entitled to
762 compensation in accordance with the following Section, “Valuation,” for the value of the
763 Development Rights taken and the Grantor shall be entitled to compensation in accordance with
764 applicable law for the value of the underlying fee title and improvements taken. **[Insert as**
765 **appropriate:** In the event that {Local} Grantee is the recipient of the proceeds from any
766 condemnation, then {Local} Grantee shall distribute to **[Insert one of the following: i) RCO; ii)**
767 **the United States; iii) RCO and the United States]** their respective shares of the proceeds as soon
768 as is practicable.]

769 **Valuation.** These Development Rights constitute a real property interest immediately vested in
770 the Grantee{s}. For purposes of this Section, the Parties stipulate that these Development Rights
771 have a fair market value determined by multiplying (a) the then fair market value of the Protected
772 Property unencumbered by the Deed and Agreement (minus any increase in value attributable to
773 improvements on the Protected Property), at the time of termination or extinguishment, as
774 determined by an appraisal that meets standard real property appraisal methods by (b) the ratio of
775 the value of the Development Rights at the time of this grant to the value of the Protected Property,
776 unencumbered by the Deed and Agreement, at the time of this grant. For purposes of this Section,
777 the Parties agree that the ratio of the value of the Development Rights to the value of the Grantor’s
778 property unencumbered by the Deed and Agreement at the date of this conveyance is evidenced by
779 that certain real property appraisal prepared by _____, dated _____, on file with {Local}
780 Grantee. This ratio is _____ (e.g., 0.375) and shall remain constant.

781 **[Insert if RCO is a Third Party Beneficiary:** The amount of compensation entitled to the
782 RCO shall be the percent of the {Local}Grantee’s share that is equal to the percent of RCO funding

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783 that was originally used to acquire the Development Rights interest, which is__ %. Upon recovery
784 of the value of these Development Rights, {Local} Grantee shall promptly remit to the RCO its
785 share of the proceeds.]

786 **[Insert if the United States is a Grantee or a Third Party Beneficiary:** The amount of
787 compensation entitled to the United States shall be the percent of the {Local} Grantee’s share that
788 is equal io the percent of federal funding that was originally used to acquire the Development
789 Rights interest, which is__ %. Upon recovery of the value of these Development Rights, {Local}
790 Grantee shall promptly remit to the United States its share of the proceeds.]

791 **No Affirmative Obligations; Indemnification.** Grantee{s}, in purchasing the Development
792 Rights and related interests described herein, assumes no affirmative obligations whatsoever for
793 the management, supervision or control of the Protected Property or of any activities occurring on
794 the Protected Property. Grantors shall indemnify Grantee{s} and hold Grantee{s} harmless from
795 all damages, costs (including, but not limited to, attorneys’ fees and other costs of defense incurred
796 by Grantee{s}) and other expenses of every kind arising from or incident to any claim or action for
797 damages, injury, or loss suffered or alleged to have been suffered on or with respect to the
798 Protected Property. Nothing in his Deed and Agreement shall be construed as giving rise, in the
799 absence of a judicial decree, to any right or ability in Grantee{s} **[Insert as appropriate:** or any
800 Beneficiary to this Deed and Agreement] to exercise physical or managerial control over the day-
801 to-day operations of the Protected Property, or any of Grantor’s activities on the Protected
802 Property, or otherwise to become an operator with respect to the Protected Property within the
803 meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of
804 1980, as amended (“CERCLA”). This provision shall be binding upon the Grantors for so long as
805 they hold fee title to the Protected Property, and shall bind their successors in interest to the fee
806 title to the Protected Property.

807 **Environmental Warranty.** Grantor warrants that it is in compliance with, and shall remain in
808 compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by
809 any governmental authority of any violation or alleged violation of non-compliance or alleged non-
810 compliance with or any liability under any Environmental Law relating to the operations or
811 conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a
812 release or threatened release of Hazardous Materials, as such substances and wastes are defined by
813 applicable federal and state law.

814 Moreover, Grantor hereby promises to hold harmless and indemnify the {Local} Grantee **[Insert**
815 **as appropriate:** the United States **and/or** the Beneficiary(ies), if any,] against all litigation,
816 claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or
817 connected with the release or threatened release of any Hazardous Materials on, at, beneath or
818 from the Protected Property, or arising from or connected with a violation of any Environmental
819 Laws by Grantor or any other prior owner of the Protected Property. Grantor’s indemnification
820 obligation shall not be affected by any authorizations provided by {Local} Grantee **[Insert as**
821 **appropriate:** the United States and/or the Beneficiary(ies), if any,] to Grantor with respect to
822 the Protected Property or any restoration activities carried out by {Local} Grantee at the Protected
823 Property; provided, however, that {Local} Grantee shall be responsible for any Hazardous
824 Materials contributed after the date of this Deed and Agreement to the Protected Property by
825 {Local} Grantee.

826 “Environmental Law” or “Environmental Laws” means any and all Federal, state, local or
827 municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or
828 requirements of any governmental authority regulating or imposing standards of liability or

ATTACHMENT A

829 standards of conduct (including common law) concerning air, water, solid waste, hazardous
830 materials, worker and community right-to-know, hazard communication, noise, radioactive
831 material, resource protection, subdivision, inland wetlands and watercourses, health protection and
832 similar environmental health, safety, building and land use as may now or at any time hereafter be
833 in effect.

834 “Hazardous Materials” are as defined in Section IV.E. of this Deed and Agreement.

835 **Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the
836 Protected Property of a hazardous substance, Grantor agrees to take or compel responsible third
837 parties to take all steps required under applicable law and necessary to assure its containment and
838 remediation, including any cleanup that may be required (except that the use of institutional
839 controls shall not be allowed without {Local} Grantee’s consent), unless the release was caused by
840 {Local} Grantee, in which case {Local} Grantee shall be responsible for such remediation to the
841 extent the release was caused by {Local} Grantee. At its discretion, {Local} Grantee may assist
842 Grantor in compelling third parties to contain and remediate any such release.

843 **Warranties.** Grantors warrant that they are the sole owners of and have title to the Protected
844 Property in fee simple and that there is legal access to the Protected Property. The Grantors further
845 warrant, to the best of their knowledge, that Grantors and the Protected Property are in compliance
846 with all federal, state, and local laws, regulations, and requirements applicable to the Protected
847 Property and its use.

848 **Rules of Construction.** This Deed and Agreement shall be interpreted under the laws of the
849 State of Washington and the United States. Any ambiguities in this Deed and Agreement and
850 questions as to the validity or interpretation of any of its specific provisions shall be resolved in
851 favor of the {Local} Grantee so as to preserve the agricultural and open space uses of the Protected
852 Property and to obtain the goals and objectives expressed in King County Ordinance No. 4341
853 **[Insert if State funding is used:** and the Farmland Preservation Account as per RCW
854 79A.15.130]

855 **Severability.** If any section or provision of this Deed and Agreement shall be held by any court
856 of competent jurisdiction to be unenforceable, this Deed and Agreement shall be construed as
857 though such section or provision had not been included in it, and the remainder of this Deed and
858 Agreement shall be enforced as the expression of the parties’ intentions. If any section or provision
859 of this Deed and Agreement is found to be subject to two constructions, one of which would
860 render such section or provision invalid, and one of which would render such section or provision
861 valid, then the latter construction shall prevail. If any section or provision of this Deed and
862 Agreement is determined to be ambiguous or unclear, it shall be interpreted in accordance with the
863 policies and provisions expressed in King County Ordinance No. 4341 **[Insert if State funding is**
864 **used:** and the Farmland Preservation Account as per RCW 79A.15.130].

865 If any material provision of this Deed and Agreement, or the application thereof to any person or
866 circumstance, is found to be invalid or unenforceable by any court of competent jurisdiction or is
867 superseded by state or federal legislation, rules, regulations or decision, so that the intent of these
868 provisions is frustrated, the parties agree to immediately negotiate a replacement provision to
869 fulfill the intent of the superseded provisions consistent with the purpose of this Deed and
870 Agreement and applicable law.

871 **Entire Agreement.** This Deed and Agreement sets forth the entire agreement of the Parties
872 with respect to the Development Rights and supersedes all prior discussions, negotiations,
873 understandings, or agreements relating to the Development Rights, all of which are merged herein.
874 No alteration or variation of this Deed and Agreement shall be valid or binding unless contained

875 in an amendment that complies with this Deed and Agreement.

876 **Recitals.** The Parties agree that the terms and recitals set forth in this Deed and Agreement are
877 material to this Deed and Agreement, and that each Party has relied on the material nature of such
878 terms and recitals in entering into this Deed and Agreement. Each term and recital set forth herein
879 is fully incorporated into this instrument.

880 **[Insert if federal funding is used: Rights of the United States of America.** Under this Deed
881 and Agreement, the same rights are granted to the United States that are granted to the {Local}
882 Grantee. However, the Secretary of the United States Department of Agriculture (the
883 Secretary), on behalf of the United States, will only exercise these rights under the following
884 circumstances: in the event that **{insert one of the following: i) {Local} Grantee fails or ii)
885 {Local} Grantee or RCO fail}** to enforce any of the terms of this Deed and Agreement as
886 determined in the sole discretion of the Secretary, the Secretary and his or her successors or
887 assigns may exercise the United States' rights to enforce the terms of this Deed and Agreement
888 through any and all authorities available under federal or State law. In the event that **{insert one
889 of the following: i) {Local} Grantee attempts or ii) {Local} Grantee or RCO attempt}** to
890 terminate, transfer or otherwise divest itself of any rights, title, or interests in this Deed and
891 Agreement without the prior consent of the Secretary and, if applicable, payment of
892 consideration to the United States, then, at the option of the Secretary, all right, title, and interest
893 in this Deed and Agreement shall become vested solely in the United States of America.]

894 **[Insert if RCO is a Third Party Beneficiary: RCO Third Party Right of Enforcement.**
895 RCO is hereby granted third party right of enforcement of this Deed and Agreement. As such,
896 RCO may exercise all the rights and remedies provided to {Local} Grantee herein, and is entitled
897 to all of the indemnifications provided to {Local} Grantee in this Deed and Agreement. RCO and
898 {Local} Grantee each have independent authority to enforce the terms of the Deed and Agreement;
899 provided, however, that {Local} Grantee shall have primary responsibility for monitoring and
900 enforcement of the Deed and Agreement. In the event that RCO and {Local} Grantee do not agree
901 as to whether the Grantor is complying with the terms of the Deed and Agreement, RCO or
902 {Local} Grantee may proceed with enforcement actions without the consent of the other. If RCO
903 elects to enforce the terms of this Deed and Agreement, it shall first follow the process described
904 in the Section titled "Remedies" above; provided, however, that RCO shall not be obligated to
905 repeat any non-judicial dispute resolution steps already taken by {Local} Grantee. This third party
906 right of enforcement does not extend to any other third party and will automatically transfer to
907 another State agency charged with maintaining, preserving and/or restoring agricultural lands in
908 the event RCO is dissolved or reorganized.

909 In the event that the Protected Property is used by Grantor in a manner that is not consistent with
910 the purpose of this Deed and Agreement or the terms of the RCO Grant Agreement, RCO shall
911 have the right, in addition to any other remedies described in this Deed and Agreement, to require
912 that Grantor pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair market
913 value of the Development Rights, which shall be determined and distributed as provided above; or
914 (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with
915 interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may
916 be amended from time to time. Any costs, fees or damages paid by Grantor for enforcement of this
917 Deed and Agreement or restoration of the Agricultural or Open Space Values of the Protected
918 Property shall be deducted from this amount. RCO agrees that it will follow the process described
919 in the Section titled "Remedies" before exercising this right, unless legally compelled to do
920 otherwise. Any amounts due and owing RCO under this paragraph shall be due and owing within

ATTACHMENT A

921 120 days of receiving a written demand for repayment by RCO. Upon grantor’s repayment of such
922 amount to RCO, {Local} Grantee and ROC agree to prepare and record, **[Insert if applicable:**
923 with NRCS’s consent (which shall not be unreasonably withheld),] a deed amendment to release
924 Grantor from any further obligations to RCO or {Local} Grantee under this Deed and Agreement.]

925 **[Insert if RCO is a Third Party Beneficiary and/or if the United States is a Grantee or a**
926 **Third Party Beneficiary:** Before Grantee{s} or any Beneficiary to this Deed and Agreement
927 exercises its rights to undertake mediation, arbitration or legal action, the party contemplating
928 such action agrees to confer with the other parties holding enforcement rights under this Deed
929 and Agreement as to whether they will join the mediation, arbitration or legal action and share
930 costs and expenses related to such action; provided, however, that this agreement to confer shall
931 not be construed as a limitation on the ability of Grantee{s} or any Beneficiary of this Deed and
932 Agreement to exercise its enforcement and other rights under this Deed and Agreement. If
933 Grantee{s} and/or any Beneficiary of this Deed and Agreement decide(s) to join in the action and
934 share costs and expenses related to the action, the parties joining in the action and sharing costs
935 and expenses related to the action shall apply any recovery to reimburse such parties for their
936 costs and expenses; provided, however, that any amount received based on loss of value to the
937 Development Rights or resulting from condemnation and/or extinguishment of the Deed and
938 Agreement, shall be **{Insert one of the following: i) distributed to RCO; or ii) shared equally**
939 **by RCO and the United States}** only after reimbursing such parties for their costs and expenses.

940 If Grantee{s} or any Beneficiary of this Deed and Agreement choose{s} not to undertake
941 mediation, arbitration or legal action and/or share costs and expenses related to such action, such
942 party shall not be entitled to any recovery for enforcement costs; provided, however, that any
943 amount received based on loss of value to the Development Rights, or resulting from
944 condemnation and/or extinguishment of the Development Rights, shall be distributed in
945 accordance with this Deed and Agreement only after first reimbursing any party for its costs and
946 expenses that are not otherwise separately paid as part of any arbitration award or judgment.]

947
948 **Schedule of Exhibits. (list the exhibits)**

949
950 **TO HAVE AND TO HOLD** unto King County, Washington, its successors and assigns
951 forever.

952
953 **[If the United States is a Grantee substitute the following: TO HAVE AND TO HOLD**
954 **unto King County, Washington, its successors and assigns, and unto the United States of**
955 **America, forever.]**

956
957 **[Insert as appropriate:**
958 Approved as to Form

959
960
961
962 _____
963 King County Prosecuting Attorney Date

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966 Approved as to Form
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Office of the Attorney General _____ Date]

IN WITNESS WHEREOF, the parties have hereunto set their hand and seals the day and year first above written.

GRANTEE

GRANTORS

KING COUNTY

BY _____

[Insert as appropriate: signature blocks for the United States and Third Party Beneficiaries]

[Insert Notary acknowledgement(s)]