



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

July 30, 2007

Ordinance 15881

Proposed No. 2007-0348.1

Sponsors von Reichbauer and Phillips

1 AN ORDINANCE authorizing King County's sale of
2 property at 27605 -78th Avenue South in Kent, also known
3 as the Nelson Bauer farm, within council district seven.
4

5 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

6 **SECTION 1. Findings:**

7 A. The water and land resources division of King County's department of natural
8 resources and parks is the custodian of an approximately 22 acre parcel known as the South
9 277th Street Nelson-Bauer farm, located at 27605 -78th Avenue South, in the city of Kent;
10 assessor's parcel number 000680-0004. This property was acquired by King County in fee
11 simple ownership through the farmland preservation program.

12 B. Ordinance 4341, the Farm and Open Space Preservation Bond passed in 1979,
13 authorizes the county to offer such land acquired in fee title for public sale as soon as
14 practicable. The water and land resources division subsequently declared the property
15 surplus to its needs.

16 C. Pursuant to K.C.C 4.56.100, the facilities management division determined
17 that the property could not be used for affordable housing due to the restrictive covenants
18 placed on future use by the farmland program.

19 D. Notices were circulated to other county departments and to various cities,
20 water, sewer, fire, and school districts regarding the county's plan to surplus and sell the
21 property. None of the agencies has any current interest.

22 E. Pursuant to K.C.C. 4.56.100, in October 2006, the facilities management
23 division declared the property surplus to the county's present and foreseeable needs.

24 F. An appraisal was performed in May of 2007, giving an estimated market value of
25 \$325,000. Ordinance 4341 states that the property must be sold for no less than the
26 appraised value.

27 G. The farm will be sold subject to restrictions for future use as stated in its
28 reservation of development rights and restrictive covenants document, which will be
29 recorded with the deed. These restrictions limit the use of the land to agricultural and/or
30 open space. One development right will remain with the property.

31 H. Pursuant to Ordinance 4341 and K.C.C. 4.56.100, King County's facilities
32 management division has posted the farm for public sale. Due to detailed information
33 associated with its marketing, the facilities management division has determined that a
34 request for proposal is the chosen form of public sale best suited to represent history,
35 location, zoning, restrictions, and requirements associated with this property.

36 I. A promised United States Department of Agriculture federal grant to the water
37 and land resources division for \$800,000, associated with water and land resources
38 division's original farm purchase, requires that there be a recorded sale no later than end

39 of September 2007. Time is therefore of the essence, and the executive seeks prior
40 approval from council to sell the farm to a future, qualified purchaser.

41 J. Pursuant to K.C.C. 4.56.080, the King County council must approve sale of
42 county-owned real property.

43 SECTION 2. The King County council, having determined that the land described in
44 Attachments A, B and C to this ordinance is surplus to the needs of King County, and also
45 having determined that sale of the Nelson-Bauer farm is in the best interests of the public, does
46 hereby authorize the King County executive to enter into a future sale of the property for no

47 less than a current, appraised value and to execute the necessary documents to deliver the
48 Nelson Bauer farm to a prospective, qualified purchaser.

49

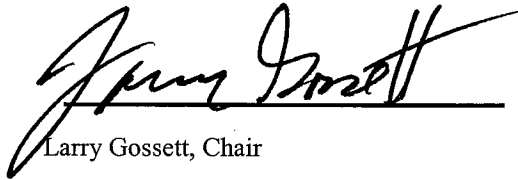
Ordinance 15881 was introduced on 6/25/2007 and passed by the Metropolitan King
County Council on 7/30/2007, by the following vote:

Yes: 8 - Mr. Gossett, Ms. Patterson, Ms. Lambert, Mr. von Reichbauer, Mr.
Ferguson, Mr. Phillips, Ms. Hague and Mr. Constantine

No: 0

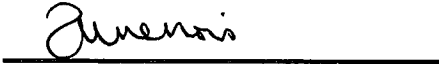
Excused: 1 - Mr. Dunn

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 8 day of August, 2007.



Ron Sims, County Executive

Attachments A. Legal Description, B. Draft Purchase and Sale Agreement Boilerplate, C.
Reservation of Development Rights and Restrictive Covenants

RECEIVED
2007 AUG 10 PM 3:18
CLERK
KING COUNTY COUNCIL

ATTACHMENT A

LEGAL DESCRIPTION

That portion of the south 891 feet of John M. Thomas Donation Land Claim No. 42 in Section 36, Township 22 North, Range 4 East, W.M., in King County, Washington, lying north of South 277th Street as conveyed to King County by instrument recorded under Recording Number 4714891, records of King County, Washington, and lying east of Chicago, Milwaukee, St. Paul & Pacific Railway Co. right-of-way, and lying west of Northern Pacific (Burlington Northern Railway Co. right-of-way);

EXCEPT the west 30 feet of the south 300 feet thereof;

AND EXCEPT that portion lying south and east of the following described line and east of the northeasterly margin of 78th Avenue South (County Road No. 76):

Beginning at the northeast corner of the above-described main tract;

thence south 00°40'19" west along the west line of said Northern Pacific Railway Co. right-of-way 258.89 feet to a point 956 feet south of the north line of said Section 36 and the TRUE POINT OF BEGINNING of said line;

thence north 89°19'41" west 100 feet;

thence south 00°40'19" west 140.70 feet;

thence south 81°07'49" west 120 feet, more or less, to the southeasterly margin of 78th Avenue South (County Road No. 76) and the terminus of said line;

AND EXCEPT the following described parcel:

Beginning at the intersection of the northerly margin of said South 277th Street with the southwesterly margin of said 78th Avenue South when known as County Road No. 76;

thence westerly along said northerly margin of said South 277th Street 300 feet;

thence northerly at right angles 235 feet;

thence easterly parallel with the northerly margin of said South 277th Street to an intersection with the southwesterly margin of said 78th Avenue South;

thence southeasterly along said margin to the point of beginning;

AND EXCEPT right-of-way for 78th Avenue South (County Road No. 76);

AND except the following described parcel

Beginning at the intersection of the northerly margin of South 277th Street conveyed to King County by instrument recorded under Recording Number 4714891, records of King County, with the southwesterly margin of 78th Avenue South (County Road No. 76) now located;

thence north 24°59'01" west along said southwesterly margin 210.26 feet to the TRUE POINT OF BEGINNING;

thence north 86°03'44" west parallel to the northerly margin of said South 277th Street 222.47 feet;

thence north 03°21'49" west 41.02 feet;

thence north 86°38'11" east 66.53 feet;

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thence south $89^{\circ}03'44''$ east 136.90 feet to the southwesterly margin of said 78th Avenue South;
thence south $24^{\circ}59'01''$ east along said margin 51.03 feet to the TRUE POINT OF BEGINNING.

And Except that portion as condemned by the City of Auburn under Superior Court cause
number 00-2-28555-8

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ATTACHMENT B

DRAFT PURCHASE AND SALE AGREEMENT BOILERPLATE

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SOUTH 277th FARM SALE
PARCEL #000680-0004

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Agreement is made as of the date this instrument is fully executed by and between KING COUNTY, a political subdivision of the State of Washington ("Seller"), and _____ ("Buyer"), for purchase and sale of that certain real property situated in King County, Washington, legally described on Exhibit A attached hereto (the "Property"), and all rights appurtenant thereto, subject to a Reservation of Development Rights and Restrictive Covenants with respect to the Property.

1. **PURCHASE PRICE:** The total purchase price for the Property is _____ [minimum of Three HundredTwenty-Five Thousand and No/100 Dollars (US \$325,000.00)] ("Purchase Price"). The Purchase Price is payable at closing in cash.

2. **TITLE:**

2.1 **Deed:** At closing, Seller will execute and deliver to Buyer a Statutory Warranty Deed as described on Exhibit C attached hereto, conveying and warranting good and marketable title to said Property free and clear of all defects or encumbrances except for the lien of real estate taxes and drainage service charges not yet due and payable, and subject to a Reservation of Utility Easement; any Permitted Exceptions to the Title Report attached hereto as Exhibit B, and a Deed for Reservation of Development Rights and Restrictive Covenants, attached hereto as Exhibit D.

2.2 **Title Insurance:** At closing, Buyer shall receive (at Buyer's expense) an owner's Standard ALTA policy of title insurance, dated as of the closing date and insuring Buyer in the amount of the Purchase Price against loss or damage by reason of defect in Buyer's title to the Property subject only to the printed exclusions appearing in the policy form and any Permitted/Subordinated Exceptions.

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3. CONTINGENCIES:

3.1 Seller's Contingencies:

3.1.1 Council Approval: The sale of the Property is subject to approval by the King County Council of an ordinance approving sale of the Property. If such approval is not granted by Friday, September 7, 2007, Seller or Buyer may terminate this Agreement upon written notice to the other. Upon such termination, neither party shall have any further rights or obligations to the other hereunder

3.2 Buyer's Contingencies:

3.2.1 Inspections and Feasibility: The condition of the Property for Buyer's contemplated use and the feasibility of such use shall meet the approval of Buyer, in Buyer's sole discretion. Buyer, its designated representatives or agents shall have the right at Buyer's expense to (i) perform any and all tests, inspections, studies, surveys or appraisals of the Property deemed necessary on any subject by Buyer (subject to the limitations set forth below); (ii) obtain a Phase I or Phase II Environmental Assessment on the Property; (iii) examine all due diligence materials that Buyer may request from Seller; (iv) determine to its satisfaction whether approvals, permits and variances for the Project can be obtained under applicable land use and zoning codes for Buyer's proposed use of the Property; and (v) determine whether Buyer's proposed use of the Property is economically feasible. Such inspections and feasibility studies must be completed no later than Thursday, July 19, 2007, at which time all negotiations for this Agreement must be finalized.

3.2.2 Right of Entry: Buyer and Buyer's designated representatives or agents shall have the right and Seller hereby grants to Buyer and Buyer's designated representatives the right to enter the Property and conduct the tests, investigations and studies set forth in this Section 3.2 upon one day advance written notice; provided that such right of entry will be limited to those times and dates that will not disrupt Seller's operations and activities on the Property. Invasive tests of the Property, such as drilling or excavation shall be subject to Seller's prior written approval, which approval shall not be unreasonably withheld. In connection with such inspections, Buyer agrees to hold harmless, indemnify and defend Seller, its officers, agents and employees, from and against all claims, losses, or liability, for injuries, sickness or death of persons, including employees of Buyer caused by or arising out of any act, error or omission of Buyer, its officers, agents, contractors, subcontractors or employees in entering Seller's property for the above purposes, to the extent not caused by or arising out of any act, error or omission of Seller, its officers, agents and employees.

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3.3 Removal of Buyer Contingencies: All Buyer contingencies must be removed no later than Thursday, July 19, 2007, by which time all negotiations for this Agreement must be finalized. The obligations under this Agreement are subject to the satisfaction of the Buyer contingencies set forth in this Section 3. In the event any one or more of the contingencies herein set forth is not satisfied within the period set forth herein for such contingency ("Due Diligence Period"), Buyer may terminate this Agreement upon written notice to Seller on or before the expiration of the Due Diligence Period, and neither party shall have any further rights or obligations to the other hereunder. Buyer shall be the sole judge as to whether its respective contingencies shall have been satisfied. Buyer may remove its respective contingencies by sending written notice thereof to Seller pursuant to Paragraph 7 herein.

4. RISK OF LOSS: Seller will bear the risk of loss of or damage to the Property prior to closing. In the event of such loss or damage to the Property, Seller shall promptly notify Buyer thereof and Buyer may, in its sole discretion, terminate this Agreement by giving notice of termination to the Seller.

5. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS: Seller represents, warrants and covenants to the Buyer at the date of execution of this Agreement and the date of closing that:

5.1 Authority: Seller, and the person(s) signing on behalf of Seller, has full power and authority to execute this Agreement and perform Seller's obligations, subject to the contingency set forth in Section 3.1.1.;

5.2 No Leases: The Property is not subject to any leases, tenancies or rights of persons in possession;

5.3 Contamination: Except for the warranties, representations and indemnifications contained in this Agreement, seller does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Purchased Assets and no employee or agent of seller is authorized otherwise. Without limitation, the foregoing specifically excludes, except for warranties, representations and indemnifications contained in this agreement, any warranties or representations with respect to the structural condition of the Purchased Assets, the area of land being purchased, the existence or non-existence of any Hazardous Substances or underground storage tanks, or the actual or threatened release, deposit, seepage, migration or escape of Hazardous Substances, from or into the Purchased Assets, and the compliance or noncompliance of the purchased assets with applicable federal, state, county and local laws and regulations, including, without limitation, environmental laws and regulations and seismic/building codes, laws and regulations. For purposes of this Agreement, the term Hazardous Substances shall mean: "hazardous substance" as

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defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 ("RCRA") as amended; hazardous wastes, hazardous materials, hazardous substances, toxic waste, toxic materials, or toxic substances as defined in state or federal statutes or regulations; asbestos-containing materials, polychlorinated biphenyls; radioactive materials, chemicals known to cause cancer or reproductive toxicity; petroleum products, distillates or fractions; any substance the presence of which is prohibited by statute or regulation; and any substance for which any statute or regulation requires a permit or special handling in its use, collection, storage, treatment or disposal.

5.4 Fees and Commissions: No broker, finder, agent or similar intermediary has acted for or on behalf of Seller in connection with this Agreement or the transaction contemplated hereby, and no broker, finder, agent or similar intermediary is entitled to any broker's finder's or similar fee or commission in connection with this Agreement based on an agreement, arrangement or understanding with the Seller or any action taken by the Seller.

5.5 Indemnification: Seller agrees to indemnify, defend, and hold harmless Buyer, its employees, agents, heirs and assigns, from and against any and all damage, claim, liability, or loss, including reasonable attorney's and other fees, arising out of or in any way connected to the breach of any representation or warranty contained herein. Such duty of indemnification shall include, but not be limited to damage, liability, or loss pursuant to all federal environmental laws, Washington State environmental laws, strict liability and common law.

6. BUYER'S REPRESENTATIONS: Buyer represents to the Seller at the date of execution of this Agreement and the date of closing that:

6.1 Authority: Buyer, and the person(s) signing on behalf of Buyer, has full power and authority to execute this Agreement and perform Buyer's obligations, and if Buyer is a corporation, all necessary corporate action to authorize this transaction has been taken;

6.2 Condition of Property: Buyer acknowledges that, within the Due Diligence Period, it will have conducted a physical inspection and made all investigations Buyer deems necessary in connection with its purchase of the Purchased Assets, and that, as of the date hereof, Seller has provided Buyer with copies of all reports in Seller's possession that have been requested by Buyer. Upon waiver or satisfaction by Buyer of its contingencies pursuant to Section 3, Buyer will be deemed to have approved the physical condition of the Property and agrees to accept and purchase the same "AS IS, WHERE IS", including, without limitation, the existence or non-existence of any pollutants, contaminants, hazardous waste, dangerous waste, toxic waste, underground storage tanks or contaminated soil, or the actual or threatened release, deposit seepage, migration or escape of such substances at, from or into the Property and the compliance or noncompliance of the Property with applicable federal, state, county and local laws and regulations

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including, without limitation, environmental laws and regulations. Buyer acknowledges and agrees that, except to the extent of Seller's representations and warranties in Section 5 of this Agreement, and to the extent of any fraud or deliberate misrepresentation by Seller, Seller shall have no liability for, and that Buyer shall have no recourse against the Seller for, any defect or deficiency of any kind whatsoever in the Property including without limitation those relating to Hazardous Substances, without regard to whether such defect or deficiency was discovered or discoverable by the Buyer or Seller.

6.3 Fees and Commissions: Buyer shall pay for any broker's or other commissions or fees incurred by the Buyer in connection with the sale of the Property and Buyer shall indemnify and hold Seller harmless from all such claims for commission and/or fees.

6.4 Indemnification: Buyer agrees to indemnify, defend, and hold harmless Seller, its employees, agents, heirs and assigns, from and against any and all damage, claim, liability, or loss, including reasonable attorney's and other fees, arising out of or in any way connected to the breach of any representation or warranty contained herein. Such duty of indemnification shall include, but not be limited to damage, liability, or loss pursuant to all federal environmental laws, Washington State environmental laws, strict liability and common law.

7. CLOSING:

7.1 Time for Closing: The sale will be closed in the office of the Closing Agent not later than Friday, September 14, 2007.

Buyer and Seller shall deposit in escrow with the Closing Agent all instruments, documents and moneys necessary to complete the sale in accordance with this Agreement. As used in this Agreement, "closing" and "date of closing" means the date on which all appropriate documents are recorded and proceeds of the sale are available for disbursement to Seller. The Closing Agent shall be:

Pacific Northwest Escrow Company
215 Columbia Street
Seattle, Washington 98104

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7.2 Prorations; Closing Costs: Seller will pay real estate excise taxes (if any are due) and real property taxes (if any are due) prorated through the date of closing. Buyer will pay the premium for its owner's title insurance policy. Seller and Buyer shall split equally the Closing Agent's escrow fees.

8. NOTICES: Any notices required herein shall be given to the parties at the addresses listed below:

TO SELLER:

King County
500 Fourth Avenue, Suite 500
Seattle, Washington 98104
Attn: Bob Thompson

TO BUYER:

[Insert Buyer's Address]

9. GENERAL: This is the entire agreement of the Buyer and Seller with respect to the Property and supersedes all prior or contemporaneous agreements between them, written or oral. This Agreement may be modified only in writing, signed by Buyer and Seller. Any waivers under this Agreement must be in writing. A waiver of any right or remedy in the event of a default will not constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement is for the benefit of, and binding upon, Buyer and Seller and their heirs, personal representatives, successors and assigns. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision. Time is of the essence in this agreement.

10. WASTE; ALTERATION OF PROPERTY: Prior to closing Seller shall not commit waste on the Property, nor shall Seller remove trees or other vegetation, coal, minerals or other valuable materials nor shall Seller substantially alter the surface or subsurface of the Property without the express written consent of Buyer.

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11. SURVIVAL OF WARRANTIES: The terms, covenants, representations and warranties shall not merge in the deed of conveyance, but shall survive closing.

Signed in duplicate original.

BUYER:

[Insert Buyer's Name Here],

By: _____

Title: _____

Date: _____

SELLER:

KING COUNTY,
a political subdivision of the State of Washington

By: _____

Date: _____

EXHIBITS: Exhibit A – Legal Description
Exhibit B – Permitted Exceptions in Title Report
Exhibit C – Form of Deed for Property and Reservation of Utility Easement
Exhibit D – Form of Deed for Reservation of Development Rights and
Restrictive Covenants

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**EXHIBIT A
TO
REAL ESTATE PURCHASE AND SALE AGREEMENT**

LEGAL DESCRIPTION

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**EXHIBIT B
TO
REAL ESTATE PURCHASE AND SALE AGREEMENT**

PERMITTED EXCEPTIONS

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**EXHIBIT B
TO
REAL ESTATE PURCHASE AND SALE AGREEMENT**

PERMITTED EXCEPTIONS

PERMITTED EXCEPTIONS TO TITLE REPORT

1. EASEMENT AND THE TERMS AND CONDITIONS REFERENCED THEREIN, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

GRANTEE: King County
PURPOSE: Installing, constructing, re-constructing, operating, maintaining, removing, repairing, replacing and using sewer interceptor
AREA AFFECTED: Southerly portion of said premises
RECORDED: December 6, 1999
RECORDING NUMBER: 19992106000998

2. EASEMENT AND THE TERMS AND CONDITIONS REFERENCED THEREIN, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

GRANTEE: King County
PURPOSE: Sanitary sewer pipeline
AREA AFFECTED: Portion of said premises
RECORDED: November 8, 2002
RECORDING NUMBER: 20021108000199

3. RIGHT TO MAKE NECESSARY SLOPES FOR CUTS OR FILLS UPON PROPERTY HEREIN DESCRIBED AS GRANTED IN DEED:

RECORDED: July 25, 1956
RECORDING NUMBER: 4714891
GRANTEE: County of King, State of Washington

4. EASEMENT AND THE TERMS AND CONDITIONS THEREOF, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

IN FAVOR OF: City of Auburn
CONDEMNED IN KING COUNTY
SUPERIOR COURT CAUSE NUMBER: 00-2-28555-8
PURPOSE: Ingress and egress, installing a gravel road and for maintenance and constructions
AREA AFFECTED: Boarding the acquisition portion of the condemnation

(continued)

5. The property herein described is carried on the tax rolls as exempt; however, it will become taxable from the date of transfer to a taxable entity.

TAX ACCOUNT NUMBER: 000680-0004-03

NOTE: PLEASE CONTACT THE KING COUNTY ASSESSOR'S OFFICE AT 206-296-5151 OR ONLINE AT "WWW.METROKC.GOV/ASSESSOR" TO VERIFY THE TAX AMOUNT DUE, AS EXEMPT TAXES ARE SUBJECT TO CHANGE WITHOUT NOTICE.

6. NOTICE OF HOUSING CODE VIOLATION:

RECORDED: March 12, 2004
RECORDING NUMBER: 20040312000343
CITY'S FILE NUMBER: CO0023699

7. Payment of Real Estate Excise Tax, if required.

The property described herein is situated within the boundaries of local taxing authority of City of Kent.

Present Rate of Real Estate Excise Tax as of the date herein is 1.78%.

NOTE 1: SPECIAL TAXES AND CHARGES, PAID IN FULL:

YEAR: 2007
TAX ACCOUNT NUMBER: 000680-0004-03

	AMOUNT BILLED	
SPECIAL DISTRICT:	\$10.97	
	\$10.00	
TOTAL BILLED:	\$20.97	PAID: \$20.97

NOTE 2: Our examination discloses that the vestee herein does not own any contiguous property.

NOTE 3: The name and address of the current taxpayer according to the King County Assessors record is:

King County
201 South Jackson Street, #600
Seattle, WA 98104

NOTE 4: The vestee herein acquired title by instrument recorded under Recording Number 20021120002828.

(continued)

NOTE 5: FIVE YEAR DELINEATION OF TITLE:

INSTRUMENT: Statutory Warranty Deed
GRANTOR: Fred F. Nelson, John E. Nelson and Nancy E. Bauer, as their respective estates
GRANTEE: King County, a political subdivision of the State of Washington
RECORDING NUMBER: November 20, 2002
EXCISE RECEIPT NUMBER: 20021120002828

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**EXHIBIT C
TO
REAL ESTATE PURCHASE AND SALE AGREEMENT
FORM OF DEED AND RESERVATION OF UTILITY EASEMENT**

FILED FOR RECORD AT REQUEST OF:

AFTER RECORDING RETURN TO:

STATUTORY WARRANTY DEED

Grantor: King County, Washington
Grantee: [Insert Buyer]
Legal Description:
Abbreviated: [Insert Legal Description]
Tax Parcel No.: [Insert Tax No]

The Grantor, KING COUNTY, a political subdivision of the State of Washington, for and in consideration of _____ and other good and valuable consideration, the receipt of which is hereby acknowledged, pursuant to King County Ordinance No. _____, does hereby convey and warrant unto Grantee, _____, the real property situated in King County, Washington, and legally described on Exhibit A attached hereto (the "Property").

Subject only to the permitted exceptions shown on Exhibit A.

Dated this _____ day of _____, 20_____.

GRANTOR:

KING COUNTY, WASHINGTON,
a political subdivision of the State of Washington

By: _____
Title: _____

GRANTEE:

By: _____
Title: _____

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EXHIBIT A TO STATUTORY WARRANTY DEED

LEGAL DESCRIPTION OF PROPERTY:

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**EXHIBIT D
TO
REAL ESTATE PURCHASE AND SALE AGREEMENT
FORM OF DEED FOR RESERVATION OF DEVELOPMENT RIGHTS**

FILED FOR RECORD AT REQUEST OF:

AFTER RECORDING RETURN TO:

**STATUTORY WARRANTY DEED
AND
RESERVATION OF AND AGREEMENT RELATING TO DEVELOPMENT RIGHTS**

Grantor:	King County, Washington
Grantee:	[INSERT BUYER]
Legal Description:	
Abbreviated:	[INSERT ABBREVIATED LEGAL]
Full:	See Exhibit A
Tax Parcel No.:	

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Attachment C

Reservation of Development Rights and Restrictive Covenants

The above described property is sold subject to conditions and restrictions hereinafter set forth. Grantees' agreement to these conditions and restrictions form a material part of the consideration for this deed, without which this conveyance would not have been made.

WHEREAS:

King County and the United States have mutual interests in preventing the conversion of agricultural lands to non-agricultural uses and it is the purpose of this Revised Deed of and Agreement Relating to Development Rights ("Deed and Agreement") to protect the prime farmland soils and to retain the agricultural viability of the Land.

The Grantees recognize that the Land is Farmland or Open Space Land as defined in King County Ordinance No. 4341 and they desire to cooperate with the Grantor in preserving land devoted to agricultural and open space uses. The characteristics of the Land are documented in an inventory of relevant features of the Land, dated _____, 20__ and located in a file entitled Baseline Documentation on file at the offices of the Grantor. The Baseline Documentation consists of reports, maps, photographs and other documentation that provide, collectively, an accurate representation of the Land at the time of this conveyance and which are intended to serve as an objective information baseline for monitoring compliance with the terms of this Deed and Agreement.

The Grantees are willing to accept the limitation on the Development Rights in the Land as such rights are defined in King County Ordinance No. 4341 (said rights being the interest in and the right to use and subdivide land for any and all residential, commercial, and industrial purposes and activities which are not incident to agricultural and open space uses), on the terms and conditions and for the purposes hereinafter set forth. The Grantor is willing to convey the Property subject to these limitations to the Development Rights in the Land and execute this instrument of conveyance.

The Grantor has determined that the conveyance of the property by the Grantor subject to limitation of the Development Rights in Farmland and Open Space Land will benefit the public through the preservation of property devoted to agricultural and open space uses.

Part of the funds for the purchase of the property by the Grantor were provided by the Farm and Ranch Lands Protection Program (FRPP), 16 USC 3838h and 3838i. Under the FRPP, the Secretary of Agriculture acting through the Natural Resources Conservation Service (NRCS), purchases interests in land on behalf of the United States for the purpose of protecting topsoil from conversion to non-agricultural uses.

The reservation of Development Rights by the Grantor will preserve the Land for activities consistent with agricultural and open space uses in perpetuity in accordance with the specific terms and conditions hereinafter set forth.

The reservation of the Development Rights by the Grantor furthers the objectives of the King County Comprehensive Plan to ensure the conservation and productive use of the County's natural resource lands and is responsive to the Washington State Growth Management Act as it serves to retain open space, encourages the conservation of productive agricultural lands, discourages incompatible uses of these lands and maintains and enhances natural resource-based industries occurring thereon.

NOW THEREFORE

The Grantees and Grantor hereby agree that the Land shall be bound by and permanently subject to the following restrictive covenants, terms, and conditions. None of these covenants, terms, and conditions shall be construed as allowing a use that is not otherwise permitted by applicable state and local laws, codes, standards, and ordinances.

RESTRICTIONS ON USE OF THE LAND

I. **Uses Restricted to Agricultural and Open Space Uses; Agricultural and Open Space Uses Defined.** Use of the Land is permanently restricted to solely agricultural and open space uses.

A. "Agricultural uses," as used herein, means:

- (1) The growing, raising, and production of horticultural and agricultural crops, including, but not limited to, vegetables, berries, other fruits, cereal grains, herbs, hay, and silage, and the processing and the marketing for off-premises consumption of such crops, so long as the processing and marketing is predominately of crops grown, raised, or produced on the Land;
- (2) All forms of animal husbandry, including the processing and marketing for off-premises consumption of the animals or their products, so long as the processing and marketing is predominately of animals raised on the Land;
- (3) The lying fallow or disuse of the Land so long as agricultural viability is maintained for future agricultural use. Agricultural uses do not include the construction, habitation, or other use of a dwelling unit, except to the extent such use is specially reserved in this instrument.

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

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

Neither open space nor agricultural uses include the following: commercial and industrial activities that are unassociated with agriculture, the construction, habitation, or other use of a dwelling unit, except to the extent such use is specifically reserved in this instrument; placement, construction or expansion of buildings, structures or roads for non-agricultural uses; the construction or use of golf courses, parking lots unassociated with agricultural uses, athletic fields, campgrounds, or vehicle raceways or animal raceways other than those principally used for the exercise of animals grown, raised, or produced on the Land. Open space uses may include unpaved trails for non-motorized use by the public that are maintained and owned by or for the benefit of a government agency or are maintained and owned by a non-profit conservation agency.

II. **Reservation of Dwelling Unit(s).** The Grantees shall have the right to the use of one single-family dwelling unit on the Land for the sole purpose of accommodating the Grantees and their successors in interest to the Land, the farm operator, or the families of such persons, or for accommodating agricultural employees of the owner or operator and their families. No more than one dwelling units in total will be permitted regardless of whether the Land is subdivided by the Grantees or by any successor in interest of the Grantees. If the land is subdivided, the number of dwelling units allocated to each subdivided parcel out of the total number of dwelling units specified above shall be indicated in the deed to each such parcel and on the face of any plat or other instrument creating the subdivision or conveying an interest in the Land; however, failure to indicate the number of such dwelling units thereon shall not invalidate or otherwise affect the restriction of the total number of dwelling units on the Land. The dwelling unit shall be a permanent or mobile structure designed and used for single-family residential occupancy.

III. Further Restriction on Use of the Land. Potential uses of the Land are limited in that the Grantees, their heirs, successors, and assigns shall only be entitled to use, lease, maintain, or improve the Land for agricultural and open space uses, and they shall comply with the following terms, conditions, restrictions, and covenants, which are permanently binding on the Land:

A. No subdivision of the Land that reduces any parcel to less than 10 acres shall be permitted. All restrictions imposed by this instrument shall survive any subdivision.

B. No more than a total of 5 percent of the Land or of any parcel thereof resulting from any future subdivision of the Land, shall be covered by structures and/or nontillable surfaces. "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.

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

D. No subsurface activities, including excavation for permitted underground utilities, pipelines, or other underground installations shall be allowed that cause permanent disruption of the surface of the Land. Temporarily disrupted soil surfaces shall be restored in a manner consistent with agricultural uses, including restoration of the original soil horizon sequence, within one year of when the soils were initially disrupted.

E. No dumping or storage of solid or liquid waste, or of trash, rubbish, or noxious materials shall be permitted. However, the temporary storage of waste generated on the Land is permitted so long as such storage is in compliance with all applicable laws. Composting of biodegradable materials for on-site application at agronomic rates is permitted, so long as the composting is done in accordance with all applicable laws. Production of compost for sale and/or off-site application must be predominately of biodegradable materials produced on the Land or of biodegradable materials that have been used for agricultural purposes on the Land, and in accordance with all applicable laws.

F. No activities that violate sound agricultural soil and water conservation management practices shall be permitted.

G. No signs shall be erected on the Land except for the following purposes:

- (1) to state the name of the property and the name and address of the occupant;
- (2) to advertise any use or activity consistent with the agricultural or open space uses as herein defined; or
- (3) to advertise the property for sale or rent.

H. Recreational uses of the property are limited to passive recreational open space uses such as hiking, fishing, horseback riding, and other forms of recreation that do not require site modification to accommodate motorized, mechanical or electronic accessories. All forms of developed recreation or recreation that adversely impacts the conservation purposes of this Deed and Agreement are prohibited.

I. Grantees shall retain all water rights necessary for present or future agricultural production on the Land and shall not transfer, encumber, lease, sell, abandon or otherwise separate such quantity of water rights from title to the Land without the prior, written consent of Grantor. If land possessing water rights is subdivided, a water right of sufficient quantity to support agriculture must be allocated to each parcel created by the subdivision.

J. Unless otherwise prohibited by law, trees may be cut to control insects and disease, prevent personal injury and property damage, obtain wood for personal use, construct fences as permitted herein, and, with advance written permission of Grantor, maintain grasslands. Except for trees produced as agricultural products, any commercial harvesting of trees shall be conducted in accordance with a forest stewardship plan prepared by a professional forester and in accordance with state and local regulations.

K. Existing fences may be repaired or replaced and new fences may be constructed for the purposes described in the Conservation Plan referenced in this instrument.

L. Installation or relocation of electric, gas, water and wind power facilities, sewer lines, or other public or private utilities including telephone or other communications services over or under the Land, is prohibited, except to the extent necessary to serve the Land and uses permitted by this Deed and Agreement or unless, as specified in Ordinance 4341, the King County Council has found it necessary to convey a utility easement for such installation or relocation. Any such conveyance shall require the prior written consent of the Natural Resources Conservation Service.

M. In addition to and subject to all of the other restrictions contained herein, any and all reserved dwelling units, permanent structures and non-tillable surfaces, as these terms are defined and described in Sections II. and III.B. of this Deed and Agreement, which exceed 200 square feet in size, with the exception of field roads, shall be restricted to and located within an area that is no more than 200 feet from the western boundary of the right-of-way of 78th Avenue South.

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

ADDITIONAL COVENANTS AND AGREEMENTS

The Grantees and Grantor further agree as follows:

Conservation Plan. As required by Section 1238I of the Food Security Act of 1985, as amended, the Grantee, their heirs, successors, or assigns, shall conduct all agricultural operations on the Land in a manner consistent with a conservation plan prepared in consultation with the Natural Resources Conservation Service (NRCS) and approved by the King Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on _____, 20____. However, the Grantees may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Land, with advance notice to the Grantees, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantees to explore methods of compliance and give the Grantees a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantees do not comply with the conservation plan, NRCS will inform Grantees of the Grantees' noncompliance. The Grantees shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantees to correct such noncompliance, and (c) Grantees have exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantees to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantees may be or become subject.

Covenant Against Encumbrances. The Grantees covenant that they will not do or execute, or allow to be done or executed, any act, deed, or thing whatsoever whereby the Development Rights hereby reserved, or any part thereof, now or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.

Subsequent Liens. No provisions of this Deed and Agreement should be construed as impairing the ability of the Grantees to use this Land as collateral for a loan, provided that any mortgage or lien associated with the loan is subject to or subordinated to this Deed and Agreement.

Responsibilities of Grantees and Grantor Not Affected. Other than as specified here, this Deed and Agreement is not intended to impose any legal or other responsibility on Grantor or in any way affect any existing obligations of Grantees as the owner of the Land.

Remedies. Grantor has the right to prevent and correct or require correction of violations of the terms, conditions, restrictions and covenants of this Deed and Agreement. After giving reasonable notice to the possessors of the Land, the Grantor or its authorized representative shall have the right to enter from time to time onto the Land and into structures located thereon for the sole purposes of inspection and enforcement of the terms, conditions, restrictions and covenants hereby imposed.

If Grantor finds a violation, Grantor may at its discretion take appropriate legal action in law or equity and/or pursue remedies under the King County Code (KCC) for violations arising under the provisions of the KCC. Upon discovery of a violation, Grantor shall notify Grantees in writing of the violation. Except when an ongoing or imminent violation could, as determined by Grantor, seriously impair the conservation values of the Land, Grantor shall give Grantees written notice of the violation and 30 days to correct it before filing any legal action, including any administrative activity under the KCC.

If Grantees fail to cure the violation within 30 days after receipt of a notice of violation, Grantor may (1) seek enforcement under the provisions of the KCC and/or (2) bring an action in court to enforce the terms of this Deed and Agreement, to enjoin the violation, and to require restoration of the Land to the condition that existed prior to any such injury. Where a court finds that a violation has occurred, Grantees shall reimburse Grantor for all its expenses incurred in halting and correcting the violation, including but not limited to reasonable attorney's fees.

Any delay by Grantor in exercising its rights under this Deed and Agreement in the event of any violation of its terms by Grantees shall not be deemed a waiver by Grantor of such rights with respect to that violation. Moreover, any failure by Grantor to discover a violation of this Deed and Agreement or forbearance by Grantees in exercising its rights under this Deed and Agreement in the event of any violation of its terms by Grantees shall not be deemed a waiver by Grantor of such rights with respect to any subsequent violation. No waiver or waivers by the Grantor, or by its successors or assigns, of any breach of a term, condition, restriction, or covenant contained herein shall be deemed a waiver of any subsequent breach of such term, condition, restriction or covenant or of any other term, condition, restriction, or covenant contained herein.

No Alteration or Amendment. The terms, conditions, restrictions, and covenants contained herein shall not be altered or amended unless such alteration or amendment shall be made with the written consent of the Grantor and of the Natural Resources Conservation Service, or their successors or assigns, and any such alteration or amendment shall be consistent with the purposes of King County Ordinance No. 4341, as heretofore or hereafter amended.

Restrictions Binding on Successors and Third Parties. The Grantees and Grantor agree that the terms, conditions, restrictions, and covenants contained herein shall be binding upon the Grantees, their agents, personal representatives, heirs, assigns, and all other successors in interest to the Land and possessors of the Land, and shall be permanent terms, conditions, restrictions, covenants, servitudes, and easements running with and perpetually binding the Land. Any interests in the Land held or obtained by third parties shall be subordinate to the terms of this Revised Deed of and Agreement Relating to Development Rights.

Transfer of Rights by Grantees. The Grantees agree that the Development Rights to the Land shall not be sold, given, divested, transferred, or otherwise reconveyed in whole or in part in any manner except as provided in King County Ordinance No. 4341, as heretofore or hereafter amended, and with the consent of the United States prior to initiating said transfer of rights. In the event of such transfer, the reimbursement due the United States shall be the percent of the value of the Development Rights that is equal to the percent of federal funding that was originally used to acquire said property interest as set forth below in the Condemnation provision.

No Merger. If Grantor, at some future time, acquires the underlying fee title in the Land, the interest conveyed by this Deed and Agreement will not merge with fee title but will continue to exist and be managed as a separate estate.

Condemnation. If all or any of the Land is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, so as to remove the previously acquired Development Rights interest, in whole or in part, Grantees and Grantor shall act jointly to recover the full value of the interest in the Land subject to that taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantees and Grantor in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantees and Grantor agree that Grantor's share of the balance of the amount recovered shall be determined by subtracting the value of the Land as it is subject to this Deed and Agreement from the fair market value of the Land as if it were not subject to this Deed and Agreement, at the time of the taking or in lieu purchase. The amount of compensation entitled to the United States shall be the percent of the Grantor's share that is equal to the percent of federal funding that was originally used to acquire the Grantor's property interest, which is 50%. Upon recovery of the value of these Development Rights, Grantor shall promptly remit to the United States its share of the proceeds.

No Affirmative Obligations; Indemnification. Grantor and the United States, in reserving the Development Rights and related interests described herein, assume no affirmative obligations whatsoever for the management, supervision or control of the Land or of any activities occurring on the Land. Grantees shall indemnify Grantor and the United States and hold Grantor and the United States harmless from all damages, costs (including, but not limited to, attorneys' fees and other costs of defense incurred by Grantor and/or the United States), and other expenses of every kind arising from or incident to any claim or action for damages, injury, or loss suffered or alleged to have been suffered on or with respect to the Land. This provision shall be binding upon the Grantees for so long as they hold fee title to the Land, and shall bind their successors in interest to the fee title to the Land.

Rules of Construction. This Reservation shall be interpreted under the laws of the State of Washington and the United States. Any ambiguities in this Reservation and questions as to the validity of any of its specific provisions shall be resolved in favor of the Grantor so as to preserve the conservation values of the Land and to obtain the goals and objectives expressed in King County Ordinance No. 4341.

Severability. If any section or provision of this instrument shall be held by any court of competent jurisdiction to be unenforceable, this instrument shall be construed as though such section or provision had not been included in it, and the remainder of this instrument shall be enforced as the expression of the parties' intentions. If any section or provision of this instrument is found to be subject to two constructions, one of which would render such section or provision invalid, and one of which would render such section or provision valid, then the latter construction shall prevail. If any section or provision of this instrument is determined to be ambiguous or unclear, it shall be interpreted in accordance with the policies and provisions expressed in King County Ordinance No. 4341.

Contingent Right in the United States of America. In the event that Grantor fails to enforce any of the terms of this Revised Deed of and Agreement Relating to Development Rights as determined in the sole discretion of the Secretary of the United States Department of Agriculture ("Secretary"), the Secretary, his or her successors and assigns shall have the right to enforce the terms of this Revised Deed of and Agreement Relating to Development Rights through any and all authorities available under Federal or State law. Further, in the event that Grantor attempts to terminate, transfer, or otherwise divest itself of rights, title, or interest in these Development Rights or remove the previously acquired Development Rights interest without prior consent of the Secretary and payment of consideration as provided herein, then, at the option of the Secretary, all right, title, or interest in the Development Rights interest shall become vested in the United States of America.

ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES CONSERVATION SERVICE

The Natural Resources Conservation Service (NRCS), an agency of the United States Government, hereby accepts and approves the foregoing Revised Deed of and Agreement Relating to Development Rights, and the rights conveyed therein, on behalf of the United States of America.

BY _____
Title: _____
Authorized Signatory for the NRCS

[To be executed by both Grantor and Grantee]