

15881 2007-348

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]