

AFTER RECORDING RETURN TO:

Town of Hamilton
P.O. Box 528
Hamilton, WA 98255

RETURN A COPY TO

Lauren Tracy, Grant Manager
1433 South 12th Street
Mount Vernon, WA 98273

DECLARATION OF COVENANTS AND RESTRICTIONS

Grantor: Richard E. Kelley and Paula J. Kelley

Grantee: Town of Hamilton

Abbreviated Legal: Cumberland to Hamilton Lots 1 to 4 Blk 5
Assessor's Tax Parcel Number: P73856

In reference to the property or properties ("Property") conveyed by the Deed between property owner, Richard E. Kelley and Paula J. Kelley, participating in the federally-assisted acquisition project ("the Grantor") and the Town of Hamilton, its successors and assigns ("the Grantee"):

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, ("The Stafford Act"), 42 U.S.C. § 5121 et seq., identifies the use of pre-disaster mitigation grants under § 5133, Pre-Disaster Mitigation ("PDM"), to assist States and local governments in implementing cost-effective hazard mitigation measures to reduce injuries, loss of life, and damage and destruction of property,

WHEREAS, the PDM program provides a process for a local government, through the State, to apply for federal funds for pre-disaster mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

WHEREAS, the State of Washington has applied for and been awarded such funding from the Department of Homeland Security Federal Emergency Management Agency ("FEMA"), and has entered into a FEMA-State Pre-Disaster Mitigation Competitive Grant Agreement ("Grant Agreement"), dated September 25, 2007 and herein incorporated by reference;

WHEREAS, the Property is located in unincorporated Skagit County, and Skagit County and the Town of Hamilton participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of the Deed;



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WHEREAS, the Town of Hamilton, acting by and through the Hamilton Town Council, has applied for and been awarded federal funds pursuant to an agreement with Washington State dated September 25, 2007 ("State-Local Agreement") and herein incorporated by reference;

WHEREAS, the terms of the Stafford Act, Federal program requirements consistent with 44 C.F.R. 206.434(e), the Grant Agreement, and the State-local Agreement require that the Grantee agree to conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

NOW, therefore, the grant is made subject to the following terms and conditions:

1. Terms. Pursuant to the terms of the Stafford Act, Federal program requirements consistent with 44 C.F.R. 206.434(e), the Grant Agreement, and the State-local Agreement, the following conditions and restrictions shall apply in perpetuity to the Property described in the attached deed and acquired by the Grantee pursuant to FEMA program requirements concerning the acquisition of property for open space:

a. Compatible uses. The Property shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved permeable parking lots and other uses consistent with Pre-Disaster Mitigation Grant Guidance for open space acquisition.

b. Structures. No new structures or improvements shall be erected on the Property other than: "A public facility that is open on all sides and functionally related to the open space use;

"A public rest room; or

"A structure that is compatible with the uses described in Paragraph 1(a), above, and approved

by the Director in writing prior to the commencement of the construction of the structure.

"Any structures built on the Property according to this paragraph shall be floodproofed or

elevated to the Base Flood Elevation plus one foot of freeboard.

c. Disaster Assistance. No disaster assistance from any Federal source for any purpose related to the Property may be sought, nor will such assistance be provided;

d. Transfer. The Grantee agrees that it shall convey any interest in the Property only if the Regional Director of FEMA gives prior approval of the transferee in accordance with this paragraph. The Grantee may only convey an interest in the Property to another public entity or to an organization with conservation purposes qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable implementing regulations. However, the Grantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

If title to the Property is transferred to a public entity other than a qualified state or federal with a conservation mission, it must be conveyed subject to a Conservation Easement that shall recorded with the deed and shall incorporate all terms and conditions set forth herein, including



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easement holder's responsibility to enforce the easement. This shall be accomplished by one of following means:

- i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to someone other than the title holder, or
 - ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.
2. Inspection. FEMMA, its representatives, and assigns, including Washington State, shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of the grant.
3. Monitoring and Reporting. Every three years on a mutually agreed upon date, the Grantee, through Washington State, shall submit to the FEMMA Regional Director a report certifying that the Grantee has inspected the subject Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of the grant.
4. Enforcement. If the subject Property is not maintained according to the terms of the grant, the Grantee, Washington State, and FEMMA, its representatives, and assigns are responsible for taking measures to bring the Property back into compliance.
- a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

- b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.
- c. FEMMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

- i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the Property back into compliance with the terms of the grant; or
- ii. Bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee.

5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.



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Standard signature block:

[Signed by Grantor(s) and Grantee, witnesses and notarization in accordance with local law.]

Richard E. Kelley
Grantor's Signature
Date 4/6/08

Paula J. Kelley
Grantor's Signature
Date 4/10/08

Timothy A. Bates
Grantee's Signature
Date 5/19/08

On 5-19-08 Timothy A. Bates personally appeared before me, known to me to be the Mayor of Hamilton, and stated under oath that he signed this document as the free and voluntary act and deed of the Town of Hamilton.

Patrick M. Hayden
Notary Public

