

Return Address:  
Adam P. Sant  
Floodplain Project Manager  
SEA Program, Headquarters  
Washington State Department of Ecology  
300 Desmond Drive SE  
Lacey, WA 98503

Above this line reserved for recording information.

### **DEED RESTRICTION - RESTRICTIVE COVENANT**

(City of Auburn, WA Mill Creek Restoration Project, Washington Department of Ecology  
Grant No. G1400661)

|                              |  |
|------------------------------|--|
| Reference # (if applicable): | N/A  |
| Dedicator:                   | City of Auburn   |
| Legal Description/STR:       | Lots 2, 3, 4 and Tract "B" of City of Auburn<br>Short Plat Number SP 2-86 recorded under<br>Recording No. 8606050395 |
| Assessor's Tax Parcel ID#:   | 1221049037, 1221049038, 1221049039,<br>1221049007  |

This Deed Restriction - Restrictive Covenant for the purposes of Floodplain Protection and/or Restoration (referred to hereinafter as "DEED RESTRICTION") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by the CITY OF AUBURN, a Washington Municipal Corporation organized under Title 35A RCW, hereinafter referred to as the "CITY".

WHEREAS, the CITY is owner in fee simple of certain real property purchased in August 2014 located in the City of Auburn, King County, Washington, legally described on Exhibit A attached hereto and incorporated herein by reference, which properties are intended to be subject to this DEED RESTRICTION and burdened in perpetuity with this DEED RESTRICTION ("SUBJECT PROPERTY"); and

WHEREAS, the CITY or the representative of the CITY executing this DEED RESTRICTION has the authority to burden the SUBJECT PROPERTY to certain use restrictions enforceable by the Washington State Department of Ecology

(Ecology). The purpose of this DEED RESTRICTION is to ensure that the SUBJECT PRPOERTY will be used to enable floodplain protection and/or restoration and to prevent this land from future development. These restrictions are a condition of the grant funding (Grant No. G1400661, Mill Creek Restoration Project) appropriated by the State of Washington Department of Ecology through the 2013 Washington State legislature under §3069 of the Capital Budget; and

WHEREAS, in order to satisfy a grant funding requirement of the July 2014 Ecology Grant Agreement No. G1400661 between the State of Washington Department of Ecology and the City of Auburn, the CITY agrees to record this DEED RESTRICTION to enable floodplain protection and/or restoration and to prevent the SUBJECT PROPERTY from future development for the benefit of public health, safety, and welfare; and

WHEREAS, the CITY understands that preservation of floodplain protection and/or restoration is an essential public health, safety and welfare measure and that this is best accomplished through the prevention of any future development of the affected parcels of land and that floodplain management as stated herein is in conformity with the CITY'S Comprehensive Plan; and

WHEREAS, the CITY has acknowledged the important environmental value of this DEED RESTRICTION and agrees not to undertake any activity which will in any way be inconsistent with floodplain protection and/or restoration on the SUBJECT PROPERTY.

NOW, THEREFORE, in consideration of funding provided by the Washington State Department of Ecology to assist the CITY in purchasing the SUBJECT PROEPTY, the CITY hereby causes to be recorded against the SUBJECT PROPERTY in perpetuity, a DEED RESTRICTION and restrictive covenants to enable floodplain protection and/or restoration and to prevent the SUBJECT PROPERTY from future development for the benefit of the public, as follows:

1. **Authority to Burden Subject Property.** The CITY is the owner in fee simple of the SUBJECT PROPERTY referred to above and has full power and authority to burden the SUBJECT PROPERTY in perpetuity for the benefit of the public.
2. **No Merger.** The rights that are set forth herein are usually secured by means of an easement, but in this instance there is no separate legal entity to which the City can grant such an easement. Since an easement granted by an

entity to itself would merge into the fee ownership, it would have no legal effect. The City intends by recording of this DEED RESTRICTION to provide actual and constructive notice to the successors, assigns, purchasers, transferees, and lessees of the SUBJECT PROPERTY of the restrictions imposed by this DEED RESTRICTION.

3. **Deed Restriction in Perpetuity.** The CITY intends that the restrictions contained in this DEED RESTRICTION not merge into the fee title and thereby be removed or eliminated. The CITY hereby dedicates in perpetuity and covenants that this DEED RESTRICTION shall run with the land included in the SUBJECT PROPERTY legally described in Exhibit A attached hereto. This DEED RESTRICTION shall burden the SUBJECT PROPERTY and benefit the CITY and the public.
4. **Heirs, Successors, and Assigns.** This DEED RESTRICTION shall be binding on the City's heirs, successors, and assigns.
5. **Scope of Deed Restriction.** This DEED RESTRICTION shall allow the CITY to enter upon the SUBJECT PROPERTY for the purposes of constructing, monitoring, maintaining, preserving, and enhancing the SUBJECT PROPERTY legally described on Exhibit "A" attached hereto. The CITY covenants not to in any way impair or interfere with the function and use of the SUBJECT PROPERTY, and the CITY further covenants to take reasonable and necessary steps to restrict access to the SUBJECT PROPERTY and prohibit construction of any structures or artificial surfaces or alteration of any floodplain area within the SUBJECT PROPERTY. No activity of any kind may take place within the SUBJECT PROPERTY without the prior approval by the CITY's Director of Community Development and Public Works or other CITY official authorized by the Mayor of the CITY and prior written notification to the State of Washington Department of Ecology, except the CITY shall be permitted to enter onto the SUBJECT PROPERTY at all reasonable times for monitoring and maintenance purposes.
6. **Use Restrictions for Subject Property.** Uses of the SUBJECT PROPERTY shall be restricted to:
  - a. Restoring the land to natural habitat conditions by removing human structures, materials, waste, etc.;
  - b. Enhancing the river, stream and/or floodplain to protect Mill Creek from flooding;

- c. Planting of the riparian area and/or floodplain;
- d. Providing vegetation management of exotic species (e.g., reed canary grass, purple loosestrife, etc.);
- e. Allowing for maintenance, repair, and necessary reconstruction of the restoration project and all associated elements;
- f. Allowing for previous site access;
- g. Enhancement of the river, stream, floodplain, and/or riparian area for fish and wildlife habitat; and
- h. Providing open space and recreation.

The restrictions and obligations described above are intended to run with the land and are intended to be binding on any and all persons who acquire an interest in the SUBJECT PROPERTY. In the event the SUBJECT PROPERTY is no longer included as part of the current undeveloped and/or restored floodplain system, CITY fails to manage the property as outlined above, or ownership interest changes, Ecology may, at its sole discretion, direct CITY to either: 1) to sell the property and pay Ecology one hundred (100) percent based on a \$511,979.04 purchase price and Ecology's contribution of \$511,979.04) of the net sales proceeds (sale price minus actual and reasonable selling expenses, if any); OR 2) to pay Ecology either one hundred (100) percent of the current appraised value of the property or \$511,979.04, whichever is higher.

7. **Reserved Rights.** The CITY reserves to itself all rights, title, interest, and obligations incident to ownership of the SUBJECT PROPERTY.
8. **Enforcement.** In the event that the CITY is no longer the owner of the SUBJECT PROPERTY and a violation of the terms of this DEDICATION is noted to the CITY in writing, the CITY shall notify the then-current owner that the owner has thirty (30) days from receipt of said notice to cure the violation. If the owner does not cure the violation, the CITY may initiate an enforcement action as provided for by law. The CITY, at its option, may take action to preserve and protect the SUBJECT PROPERTY and its floodplain protection or floodplain restoration function, after first giving written notice, and, in such case, the reasonable expenses incurred by the CITY shall be recoverable from the party that is found to be in violation of this DEDICATION.

9. **Costs and Liabilities.** The CITY retains all responsibilities and will bear all costs and liabilities of any kind related to or incidental to the ownership of the SUBJECT PROPERTY and agrees to pay all assessments and taxation (if any) against said SUBJECT PROPERTY assessed by any governmental authority as they become due for as long as the CITY remains the fee owner of the SUBJECT PROPERTY.
10. **Recordation.** The CITY agrees to incorporate the terms of this Agreement in any deed, lease or other agreement which divests the CITY of any interest in any portion of the SUBJECT PROPERTY. The CITY shall record this Dedication immediately in the Office of the King County Department of Records and Elections.
11. **Construction.** This DEDICATION shall be liberally construed to effect the purpose and intent hereof.
12. **Severability.** If any provision of this DEDICATION is ruled invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions hereof shall remain in force and effect.

This DEED RESTRICTION shall be effective as of the date first written above.

**DEED RESTRICTOR:**

CITY OF AUBURN, a municipal corporation

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

Name: Nancy Backus

Title: Mayor

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that NANCY BACKUS was the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the MAYOR of the CITY OF AUBURN to be the free and voluntary act of said city for the uses and purposes mentioned in this instrument.

Dated \_\_\_\_\_

Notary Public in and for the State of Washington  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_