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## COVER SHEET FOR RECORDING DOCUMENTS

**Return to:** City of Mount Vernon  
Post Office Box 809  
Mount Vernon, Washington 98273

**DOCUMENT TITLE:** Agreement and Real Covenant

**GRANTORS:** City of Mount Vernon

**GRANTEES:** Landmark Building and Development

**LEGAL DESCRIPTION:** Lot 5 of the Plat of Spinnaker Cove recorded under Auditor's  
File No. 200209170010 records of Skagit County.

**Situated in the County of Skagit, State of Washington.**

**ASSESSOR'S PARCEL/TAX ID NUMBER:** P119517

## AGREEMENT AND REAL COVENANT

THIS AGREEMENT AND REAL COVENANT is made this 25 day of April, 2003, by Great American Dream, DBA Landmark Building and Development, a Washington corporation (hereinafter, "Owner") the owner of record title to that parcel of real estate described in the attached Exhibit "A", and more commonly known as 1601 N. 43<sup>rd</sup> Place, Mount Vernon, WA, and the City of Mount Vernon, a Washington municipal corporation (hereinafter, the "City");

WHEREAS the real property described above is subject to an easement for sanitary sewer, drainage facilities, and a pedestrian corridor, previously recorded under Auditor's Fee No. 9508210066, in favor of the City, and

WHEREAS on or about [date], Owner submitted to the City an application for a building permit to construct a single family residence on the real property described in Exhibit "A", which permit application failed to disclose the existence of the easement, and

WHEREAS based upon the documents submitted by the Owner, the City issued a building permit to the owner for the construction of a single family residence, and

WHEREAS during the course of construction of the residence it became known that a portion of the structure was being built within the easement described under Auditor's Fee No. 9508210066, and

WHERE in issuing the building permit, the City offered no assurances that an easement did or did not exist on the subject property, and

Justifiable reliance

WHEREAS Owner desires to maximize its use of the property described in Exhibit "A," and minimize its costs in removing portions of its structure that intrudes into the easement, and

WHEREAS the City desires to safeguard its interests in utilizing the easement for the purposes for which the easement was granted. NOW, THEREFORE, the parties hereto agree and covenant as follows.

A. Ownership. The Owner declares that it is the owner of the real property described in Exhibit "A" (the "Property"), and possesses the authority to execute this Real Covenant. The Owner further declares that the Property, and all portions thereof, shall be held, transferred, sold, conveyed, used, and occupied subject to the covenants hereinafter set forth, which covenants are for the purpose of protecting the value and desirability of the Property.



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B. **Hold Harmless.** Owner agrees to defend, indemnify, and save harmless the City and its appointed and elected officers and employees from and against all loss or expense, including, but not limited to, judgments, settlements, and attorneys' fees and costs by reason of any and all claims and demands upon the City and its elected or appointed officials or employees for damages related to the construction, maintenance, and use of a pedestrian path, sanitary and/or stormwater facilities within the easement described herein. Further, Owner agrees to defend, indemnify, and save harmless the City and its appointed and elected officers and employees from and against all loss or expense, including, but not limited to, judgments, settlements, and attorneys' fees and costs by reason of any and all claims and demands upon the City and its elected or appointed officials or employees for damages related to the construction, maintenance, and use of a waterline(s) to be installed in that easement described in Auditor's Fee No. 608565 granted in favor of the Public Utility District No. 1 of Skagit County. Notwithstanding the foregoing, this provision shall not operate to indemnify the City from damages that are the result of the sole negligence of the City.

C. In executing this Covenant and Agreement, the parties understand that there are risks inherent in the construction and maintenance of storm and water line facilities within the easements described herein. The parties covenant and agree that damages resulting from the failure and/or settlement of any soils related to excavations necessary or convenient for the installation or maintenance of the facilities described herein shall not constitute negligence on the part of the City.

D. In executing this Covenant and Agreement, the parties understand that a pedestrian corridor may be constructed on the easement. Owner covenants and agrees that it will not block or hinder members of the public from utilizing the pedestrian corridor.

E. **Covenants Running with the Land.** The covenants and restrictions hereby imposed shall run with the land and shall be binding upon and inure to the benefit of the successors, assigns, agents, licensees, invitees, and representatives, of the parties including, without limitation, all subsequent owners of the Property, or any portion thereof, and all persons claiming under them.

F. **Recordation.** This Real Covenant shall be recorded with the auditor of Skagit County, Washington. The Owner agrees to pay the fee for the preparation and recordation of this Real Covenant.

G. **Enforcement.** The Owner recognizes and agrees that the City has a valid interest in ensuring that this Real Covenant is properly adhered to, and therefore does hereby grant the City the right to enforce this Real Covenant by any proceeding at law or in equity against any person or persons attempting to or



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actually violating any restricting contained herein, either to restrain violations, to compel affirmative action, or to recover damages.

H. Exercise of City's Rights-Waiver. The City shall not be required to exercise the rights granted herein, except as it shall determine to be in its best interest. Failure by the City to exercise any right herein granted shall not be construed as a waiver of that right or any other right. Nothing herein shall be construed to constitute a dedication of any real property to the City.

I. Amendment. This Real Covenant may be modified, amended, or annulled only upon the express, prior written approval of the City of Mount Vernon.

J. Term. The restrictions hereby imposed shall be enforceable for a term of 100 years from the date this Real Covenant is recorded, after which time such Real Covenant shall be automatically extended for excessive periods of 10 years unless an instrument amending this Real Covenant shall be recorded and provide for some other duration. If any of the rights or restrictions imposed by this Real Covenant would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common-law rules imposing time limits, then such provision shall continue only until 21 years after the death of the survivor of the now living, lawful descendants of George W. Bush, President of the United States.

K. Headings. The headings of the sections herein are intended for reference only and are not intended to alter, amend, or affect any of the terms or provisions of this Real Covenant.

L. Severability. Invalidation of any one of these covenants and restrictions by a judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

M. Venue. In the event any lawsuit is brought to enforce the terms of this Covenant and Agreement, venue shall be proper in the Superior Court of Washington for Skagit County.

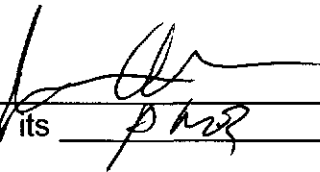


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IN WITNESS WHEREOF, the Owner has caused this Real Covenant to be executed on the date first written above.

By its 

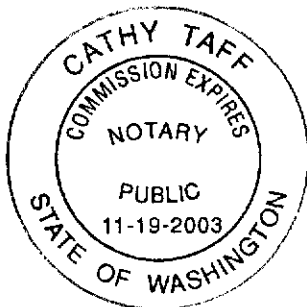
By its \_\_\_\_\_


By its \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT

I, the undersigned, a Notary Public in and for the State of Washington, do hereby certify that on this 2nd day of May, 2003, personally appeared before me John Ellis, to me known to be the individual who executed the above instrument and acknowledged said instrument to be his/her free and voluntary act and deed for the uses and purposes above mentioned.

GIVEN under my hand and official seal the day and year last above written.



  
Printed Name: Cathy Taff  
NOTARY PUBLIC in and for the State of  
Washington, residing at Stanwood  
My commission expires 11-19-03



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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT

I, the undersigned, a Notary Public in and for the State of Washington, do hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2003, personally appeared before me \_\_\_\_\_, to me known to be the individual who executed the above instrument and acknowledged said instrument to be his/her free and voluntary act and deed for the uses and purposes above mentioned.

GIVEN under my hand and official seal the day and year last above written.

Printed Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

CITY OF MOUNT VERNON

BY:

SKYE K. RICHENRFER, Mayor

ATTEST:

MARK S. KNOWLES, Finance Director

APPROVED AS TO FORM:

SCOTT THOMAS, City Attorney

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT

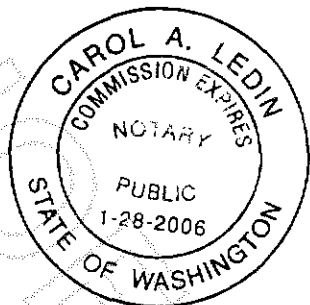


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I, the undersigned, a Notary Public in and for the State of Washington, do hereby certify that on this 4<sup>th</sup> day of June, 2003, personally appeared before me SKYE K. RICHENRFER, to me known to be the individual who executed the above instrument and acknowledged said instrument to be his/her free and voluntary act and deed for the uses and purposes above mentioned.

GIVEN under my hand and official seal the day and year last above written.



Carol Ledin  
Printed Name: Carol Ledin  
NOTARY PUBLIC in and for the State of  
Washington, residing at Sedro Woolley  
My commission expires 1-28-2006



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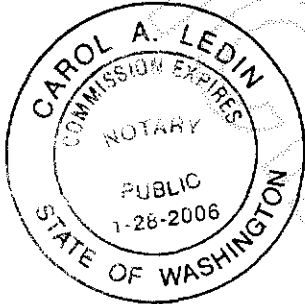
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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT

I, the undersigned, a Notary Public in and for the State of Washington, do hereby certify that on this 4 day of June, 2003, personally appeared before me Mark Knowles, to me known to be the individual who executed the above instrument and acknowledged said instrument to be his/her free and voluntary act and deed for the uses and purposes above mentioned.

GIVEN under my hand and official seal the day and year last above written.



Carol A Ledin  
Printed Name: Carol Ledin  
NOTARY PUBLIC in and for the State of  
Washington, residing at Sidro-Woolley  
My commission expires 1-28-2006



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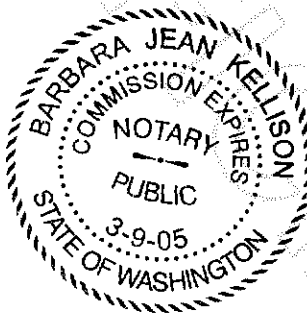
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STATE OF WASHINGTON       )  
  ) ss.  
COUNTY OF SKAGIT

I, the undersigned, a Notary Public in and for the State of Washington, do hereby certify that on this 4<sup>th</sup> day of June, 2003, personally appeared before me Scott Thomas, to me known to be the individual who executed the above instrument and acknowledged said instrument to be his/her free and voluntary act and deed for the uses and purposes above mentioned.

GIVEN under my hand and official seal the day and year last above written.



Barbara Jean Kellison  
Printed Name: Barbara Jean Kellison  
NOTARY PUBLIC in and for the State of  
Washington, residing at Sedro Woolley WA 98284  
My commission expires 3-9-05



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**"Exhibit A"**

Lot 5 of the Plat of Spinnaker Cove recorded under Auditor's File No. 200209170010 records of Skagit County.

Subject to and together with easements, reservations, restrictions, covenants and other instruments of record.

Situate in the County of Skagit, State of Washington.



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