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Skagit County Auditor

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THIRD AMENDMENT TO  
DECLARATION OF COVENANTS  
FOR  
OPAL LANE

TITLE OF DOCUMENT:	THIRD AMENDMENT TO DECLARATION OF COVENANTS FOR OPAL LANE
GRANTOR:	THE GREAT AMERICAN DREAM, INC., dba LANDMARK BUILDING & DEVELOPMENT
GRANTEE:	THE GENERAL PUBLIC
ABBREV. LEGAL DESCRIPTION:	PLAT OF NIELSEN PARK, AF# 200301030077

THIS AMENDMENT TO DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by THE GREAT AMERICAN DREAM, INC., dba Landmark Building & Development, (the "Declarant").

## ARTICLE I

### PRELIMINARY MATTERS, PURPOSE

#### 1.1. Identification of Original Declaration of Covenants and Prior Amendments.

The original "Declaration Covenants, Conditions and Restrictions for the Plat of Nielsen Park" was recorded at Auditor's File No. 200301030078, records of Skagit County, Washington; it was replaced by an instrument entitled "Amendment to the Declaration Covenants, Conditions and Restrictions for the Plat of Nielsen Park" (herein known as the "Amended Covenants") which was recorded at Auditor's File No. 200301270204; that instrument was amended by another document entitled "Amendment to the Declaration Covenants, Conditions and Restrictions for the Plat of Nielsen Park" (herein known as the "Second Amendment"), which was recorded at Auditor's File No. 200305080236. The Amended Covenants and the Second Amendment confirm that such instruments are intended to govern the use, occupancy and proper administration of the property contained within the Plat of Nielsen Park, a residential Community which has been renamed "Opal Lane" by the Declarant.

#### 1.2. Purpose of Amendment.

The Amended Covenants for the Community improperly identified the Declarant as "John Ellis, dba Landmark Building & Development"; the true name of the Declarant is The Great American Dream, Inc., which does business as Landmark Building & Development, and which owns the Lots and other property within the Plat of Nielsen Park. The Amended Covenants also contain material that is inconsistent with the Washington Homeowners Association Act, or with rules of the Federal Communications Commission, or with the Washington Nonprofit Miscellaneous & Mutual Corporations Act or, alternatively that could be better stated so as to be most useful to owners and residents of Lots in the Community. All such matters required a further amendment to the Covenants in order to be legally effective. This Amendment is intended to accomplish that objective. It is intended that the covenants, conditions, restrictions, and plan contained in the Amended Covenants, Second Amendment and this Third Amendment shall be binding upon all real property within the Community (the "Property") and upon each Lot or parcel therein as a parcel of realty, and upon their respective Owners and their family members, heirs, personal representatives, tenants, licensees, successors and assigns, through all successive transfers of a Lot or of any other part of the Property, irrespective of whether specifically referred to in deeds, contracts or security instruments, and regardless of any subsequent forfeitures, foreclosures, or sales of Lots under security instruments, or of any forfeitures, foreclosures, or sales instituted for nonpayment of government tax, levy or assessment of any kind.

#### 1.3. Description of Procedures Required for Amendment.

Pursuant to Article VIII, Section 2 of the Amended Covenants for this Community, the Covenants may be amended by the Declarant during the Development Period.

1.4. Statement of Compliance; Effective Date of Amendment.

The Development Period not having expired, the Declarant now adopts this Third Amendment to Declaration of Covenants for Opal Lane, intending and declaring that its provisions shall supersede all inconsistent material contained within the Amended Covenants. This Amendment shall become effective upon its recordation.

**ARTICLE IV, Section 15-** is replaced with the following:

15. Television and Radio Antennas, Dishes. Satellite TV antennas/dishes 1 meter or less (approximately 39") in diameter may be installed within a Lot. Larger satellite dishes and other types of reception or transmission antennas may be installed within a Lot only if reasonably screened from view from other Lots and the roadway. Ham radio and "citizens band" antennas may be used for transmission purposes only so long as they do not cause interference with electronic equipment of neighboring property owners. No reception or transmission devices may be located within the Common Areas unless expressly permitted by the Board of Directors.

**ARTICLE V - HOMEOWNERS' ASSOCIATION -** is replaced with the following:

5.1. Name and Form of Association.

The name of the Association shall be the "Opal Lane Community Association." The Association has been or will be incorporated by the Declarant as a non-profit corporation under the laws of the State of Washington. The rights and duties of the members and of said corporation shall be governed by the provisions of the Homeowners Association Act and of this Declaration. The Association shall remain organized as a profit or nonprofit corporation. In case of any conflict between Chapter 24.06 RCW, the Nonprofit Miscellaneous and Mutual Corporations Act, and the Homeowners Association Act, Chapter 64.38 RCW, the Homeowners Association Act shall control.

5.2. Powers of Association.

The Association shall, through its Board of Directors, all powers available to homeowners associations under the Homeowners Association Act, and such additional powers as may be prescribed in the Bylaws of the Association.

5.3. Management by Declarant.

The Declarant has reserved the rights to (a) appoint and remove the Officers and members of the Board of Directors of the Association, and (b) veto or approve a proposed action of the Board or the Association, for a period of time known as the "Declarant Control Period". Limitations on the Declarant Control Period are specified in Section 5.1 of the Bylaws.

5.4. Professional Management.

Provisions for professional management of the Association are made in Section 8.2 of the Bylaws.

5.5. Membership and Voting Rights.



Membership and voting rights are specified in the Bylaws of the Association

5.6. Bylaws of Association.

Bylaws for the administration of the Association and the Property, and for other purposes not inconsistent with the Homeowners Association Act and this Declaration have been or will be prepared by the Declarant, subject to the approval of the initial Board of Directors of the Association.

**ARTICLE VI - ASSESSMENTS** - is replaced with the following:

6.1. Assessments for Common Expenses.

6.1.1. Liability of Lots.

The total amount of the estimated funds required to pay the Common Expenses of the Association set forth in the Annual Budget adopted by the Board of Directors for the fiscal year shall be assessed equally against the Lots, provided that the Association may, by resolution supported by greater than 50% of the votes in the Association, require that any Common Expense or portion thereof benefitting fewer than all of the Lots shall be assessed exclusively against the Lots benefitted; such an assessment may be termed a "Limited Common Expense".

6.1.2. Timing of Payments.

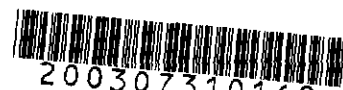
Until changed by resolution of the Board of Directors, the annual Assessment against each Lot for its share of the Common Expenses shall be due and payable on the first day of the month of February of each year. The Board may adopt further payment policies which permit payment in installments under conditions to be determined by the Board.

6.1.3. Owners Personally Liable for Common Expenses.

Each Assessment shall be the joint and several obligation of the Owner(s) of the Lot to which the same are assessed as of the time the Assessment is due. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums. No Lot Owner may exempt himself or herself from liability with respect to the Common Expenses by waiver of the enjoyment of the right to use any of the Common Areas or by leasing, rental or abandonment of his or her Lot or otherwise. The failure or delay of the Board of Directors to adopt the Annual Budget for any year shall not constitute a waiver or release in any manner of a Lot Owner's obligation to pay his or her allocable share of the Common Expenses as herein provided, and in the absence of an Annual Budget or adjusted Annual Budget, each Owner shall continue to pay (with or without notice) an Assessment at the rate established for the preceding fiscal year until an Assessment is made under a current Annual Budget or adjusted Annual Budget and notice thereof has been sent to the Lot Owner.

6.2. Liability Following Conveyance of Lot.

A selling Lot Owner shall not be liable for the payment of any part of the Common Expenses assessed against his or her Lot subsequent to a sale, transfer or other conveyance by him of such Lot. The



purchaser of a Lot shall be jointly and severally liable with the selling Lot Owner for all unpaid Assessments against the Lot up to the time of the conveyance without prejudice to the purchaser's right to recover from the selling Lot Owner the amounts paid by the purchaser therefore. The holder of a mortgage or other purchaser of a Lot who obtains the right of possession of the Lot through foreclosure shall not be liable for Assessments that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Lot Owners, including such mortgagee or other purchaser of the Lot. Foreclosure of a mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Lot prior to the date of such sale as provided above.

6.3. Statement of Unpaid Assessments.

The Association, upon written request, shall furnish to a Lot Owner or a mortgagee a statement signed by an officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Lot.

6.4. Lien for Assessments.

The Association shall have a lien on a Lot for any unpaid Assessments levied against a Lot from the time the Assessment is due. If an Assessment is payable in installments, the Association has a lien for the full amount of the Assessment from the time the first installment thereof is due.

6.5. Perfection of Lien.

Recording of this Declaration of Covenants constitutes record notice and perfection of the lien for Assessments. While no further recording of any claim of lien for Assessments shall be required to perfect the Association's lien, the Association may record a notice of claim of lien for Assessments under this section in the real property records of the county in which the Subdivision is located.

6.6. Priority of Lien.

A lien under this Section shall be prior to all other liens and encumbrances on a Lot except: (a) Liens and encumbrances recorded before the recording of the Declaration; (b) a mortgage on the Lot recorded before the date on which the Assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the Lot.

6.7. Enforcement of Lien.

The lien arising under this section shall be enforced judicially by the Association or its authorized representative in the manner set forth in chapter 61.12 RCW. The Association or its authorized representative shall have the power to purchase the Lot at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. The Association may elect to take a deed in lieu of foreclosure in any such proceeding.

6.8. Limitation of Lien Enforcement.

A lien for unpaid Assessments and the personal liability for payment thereof is extinguished unless



proceedings to enforce the lien are instituted within six years after the amount of the Assessments sought to be recovered becomes due.

6.9. Rent Subject to Lien for Assessments.

From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Lot that is not occupied by the Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Lots as and when due. If the rental is not paid, the receiver may obtain possession of the Lot, refurbish it for rental up to a reasonable standard for rental Lots in this type of project, rent the Lot or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Lot, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Lot.

6.10. Remedies Cumulative.

The remedies provided are cumulative and the Board may pursue them concurrently, along with any other remedies which may be available under the law although not expressed herein.

**ARTICLE VII - MANAGEMENT BY BOARD** - is replaced with the following:

7.1. Authority of the Board.

7.1.1. General Authority.

The Board, for the benefit of the Subdivision and the Owners, shall enforce the provisions of the Governing Documents and shall have all powers and authority granted to the Board or the Association under the Homeowners Association Act and this Declaration which are not expressly subject to the approval of the Owners.

7.1.2. Incurring and Payment of Common Expenses

The Board shall acquire and shall pay for, as Common Expenses, all goods and services deemed necessary or desirable for the proper functioning of the Association.

7.1.3. Acquisition of Property.

The Board may acquire and hold in the name of the Association, for the benefit of the Owners, tangible and intangible personal property and real property and interests therein, and may dispose of the same by sale or otherwise. Such property shall thereafter be held, sold, leased, rented, mortgaged or otherwise dealt with for the benefit of the Association as the Board may direct.

7.1.4. No Business Authority.

Nothing herein contained shall be construed to give the Board authority to conduct an active



business for profit on behalf of all of the Owners or any of them.

7.1.5. Board as Attorney in Fact.

Each Owner, by the act of becoming an Owner of a Lot, shall be deemed to have irrevocably appointed the Board of Directors as his or her attorney-in-fact, with full power of substitution, to take such actions as are reasonably necessary to perform the duties of the Association and Board hereunder, including, but not limited to, the duties to maintain, repair and improve the Property, to grant licenses and easements, and to secure and distribute condemnation awards and/or insurance proceeds affecting the Common Areas.

DATED this 28 day of July, 2003.

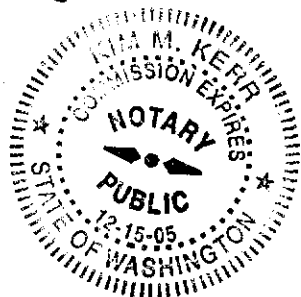
DECLARANT:  
THE GREAT AMERICAN DREAM, INC.

By [Signature]  
JOHN ELLIS, Its President

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I hereby certify that I know or have satisfactory evidence that JOHN ELLIS is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of the Declarant, THE GREAT AMERICAN DREAM, INC., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: July 28th, 2003.



[Signature: Kim M. Kerr]  
NOTARY PUBLIC for the State of  
Washington. My Commission  
expires 12/15/05



200307310169  
Skagit County Auditor