

Return Address:

Lynn O. Hurst
Montgomery, Purdue, Blankinship &
Austin, P.L.L.C.
5500 Bank of America Tower
701 Fifth Avenue
Seattle, WA 98104-7096



200412030011
Skagit County Auditor

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Use Covenant

LAND TITLE OF SKAGIT COUNTY 113159-PE

Reference Number(s) of related document(s): n/a.

Grantor: Burlington-Edison School District

Grantee: Ronald C. Knutzen, Clifford J. Sells and Charles K. Barbo, as co-trustees of the Einer Knutzen Testamentary Trust

Legal Description (abbreviated): Tr. C of Survey 200401070083 in 31-35-4 E.W.M.

Full legal(s) on Exhibits A and B

Assessor's Tax Parcel ID Number: P38141; ~~P38142~~ & P38151

1. Parties to Agreement.

1.1. Burlington-Edison School District ("the District")

1.2. Ronald C. Knutzen, Clifford J. Sells and Charles K. Barbo, as co-trustees of the Einer Knutzen Testamentary Trust ("Trust")

2. Background. Trust is the owner of certain real property legally described on Attachment A ("Trust Property"). District is the owner of certain real property legally described on Attachment B ("District Property"). District has agreed to limitations on the use of the District Property as a portion of the consideration for its acquisition of the District Property from the Trust.

3. Agreement. The District, for itself, its successors and assigns, hereby agrees that prior to, December 31, 2009, it will make no protest or objection which would have any adverse effect on the legal or practical ability of the Trust or any successor(s) to construct, license or operate a restaurant selling alcoholic drinks, bar or tavern or to otherwise sell alcohol or alcoholic beverages on any portion of the Trust Property.

4. General Provisions.

- 4.1. **Successors and Assigns.** This Use Covenant and the covenants, restrictions, benefits and obligations created hereby shall inure to the benefit of and be binding upon Parties and their successors and assigns.
- 4.2. **Injunctive Relief.** In the event of any violation or threatened violation of any of the terms, covenants and conditions contained in this Use Covenant, in addition to the other remedies herein provided and provided by law, any benefited party shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.
- 4.3. **Modification.** This Use Covenant may be modified only by a written instrument duly executed and acknowledged by all of the then owners of all of the real property affected hereby. No modification or rescission of this Use Covenant will affect the rights of any mortgagee under a mortgage, or a trustee or beneficiary under a deed of trust, which at that time constitutes a lien on any such real property.
- 4.4. **Notices.** All notices to be given pursuant to this Use Covenant shall be in writing and given by personal delivery or by United States certified mail, postage prepaid, return receipt requested, properly addressed to recipient by name at the last known address of such recipient. Anyone may specify or change its mailing address at any time by giving written notice to all of the other parties in the manner hereinabove provided. Notices shall be deemed given on the date of personal service or, if mailed, on the date of delivery or attempted delivery as shown on the return receipt.
- 4.5. **Attorney Fees.** In the event any party brings an action to enforce or construe the terms of this Use Covenant, the prevailing party to any such action shall be entitled to recover from the other party its costs and reasonable attorney fees incurred therein.
- 4.6. **Captions.** Article and paragraph captions are for convenience only are not a part of this instrument.
- 4.7. **Entire Agreement.** This Use Covenant constitutes the entire agreement between the parties regarding the subject matter hereof, and neither party shall be bound by any communication between them which is not embodied by this Agreement.
- 4.8. **Choice of Law.** This Use Covenant shall be governed by the laws of the State of Washington.

Signatures on following pages.



EINER KNUTZEN TESTAMENTARY TRUST

By: Ronald C. Knutzen
Ronald C. Knutzen, co-trustee of the
Einer Knutzen Testamentary Trust
Date: 12/2/04

By: Clifford J. Sells
Clifford J. Sells, co-trustee of the Einer
Knutzen Testamentary Trust
Date: 12/2/04

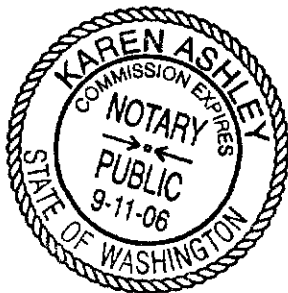
By: Charles K. Barbo
Charles K. Barbo, co-trustee of the
Einer Knutzen Testamentary Trust
Date: Dec 1, 2004

STATE OF WASHINGTON)
COUNTY OF SKAGIT)

ss.


I certify that I know or have satisfactory evidence that Ronald Knutzen, Clifford J. Sells, ~~and Charles K. Barbo~~ are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Co-Trustees of EINER KNUTZEN TESTAMENTARY TRUST to be the free and voluntary act of such party for the uses and purposes stated therein.

Dated DECEMBER 2, 2004



Karen Ashley
Name: KAREN ASHLEY
NOTARY PUBLIC, State of Washington
My appointment expires 9/11/06

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STATE OF Washington }
County of King, SS:

I certify that I know or have satisfactory evidence that Charles Barbo
signed this instrument, on oath stated that He is
authorized to execute the instrument and acknowledged it as the Co-Trustee
of The Einer C. Knutzen Testamentary Trust to be the free and voluntary act of such
party for the uses and purposes mentioned in this instrument.

Dated: December 2004

Vestine M. Mearns
Notary Public in and for the State of WA Washington
Residing at Seattle
My appointment expires: 6/29/05



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BURLINGTON-EDISON SCHOOL
DISTRICT

By: 

Dr. Richard O. Jones, Superintendent

Date: DECEMBER 2, 2004

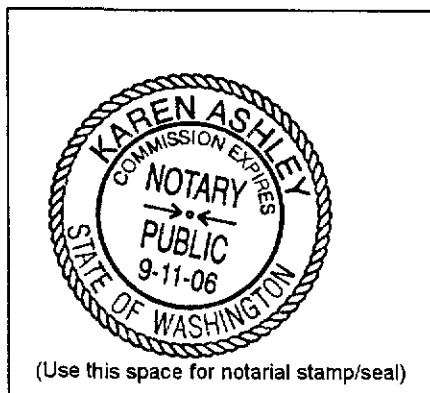
STATE OF WASHINGTON)

COUNTY OF SKAGIT)

SS.

I certify that I know or have satisfactory evidence that **Dr. Richard O. Jones** 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 Superintendent of Burlington-Edison School District to be the free and voluntary act of such party for the uses and purposes stated therein.

Dated DECEMBER 2, 2004





Name: KAREN ASHLEY

NOTARY PUBLIC, State of Washington

My appointment expires 9/11/06



Exhibit A
Trust Property

"NEW PARCEL C" as delineated on Record of Survey Map recorded as Auditor's File Number 200401070083, records of Skagit County, Washington, in the North $\frac{1}{2}$ of the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$, of Section 31, Township 35 North, Range 4 East, W.M., EXCEPT that portion thereof described as follows:

Beginning at the Northwest corner of said "NEW PARCEL C";
thence South $34^{\circ}09'09''$ West 320.87 feet to the easterly right of way margin of State Highway 1, (now Interstate No. 5), and a point on a curve, the center of said curve being South $63^{\circ}49'59''$ East 2764.79 feet;
thence Southerly along the arc of said curve to the left having a radius of said 2764.79 feet, through a central angle of $02^{\circ}45'36''$, an arc distance of 133.19 feet to the South line of said North $\frac{1}{2}$ of the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$;
thence South $89^{\circ}09'19''$ East 1207.80 feet along said South line to a point that is North $89^{\circ}09'19''$ West 180.06 feet from the West line of North Garl Street (now Burlington Blvd.);
thence North $02^{\circ}22'25''$ East 390.02 feet parallel with said West line of North Garl Street to a point that is South $89^{\circ}09'19''$ East from the POINT OF BEGINNING;
thence North $89^{\circ}09'19''$ West 987.95 feet to the POINT OF BEGINNING.

SUBJECT TO and TOGETHER WITH easements, restrictions, exceptions and other instruments of record.

Exhibit B

District Property

That portion of "NEW PARCEL C" as delineated on Record of Survey Map recorded as Auditor's File Number 200401070083, records of Skagit County, Washington, in the North $\frac{1}{2}$ of the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$, of Section 31, Township 35 North, Range 4 East, W.M., said portion being more particularly described as follows:

Beginning at the Northwest corner of said "NEW PARCEL C";
thence South $34^{\circ}09'09''$ West 320.87 feet to the easterly right of way margin of State Highway 1, (now Interstate No. 5), and a point on a curve, the center of said curve being South $63^{\circ}49'59''$ East 2764.79 feet;
thence Southerly along the arc of said curve to the left having a radius of said 2764.79 feet, through a central angle of $02^{\circ}45'36''$, an arc distance of 133.19 feet to the South line of said North $\frac{1}{2}$ of the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$;
thence South $89^{\circ}09'19''$ East 1207.80 feet along said South line to a point that is North $89^{\circ}09'19''$ West 180.06 feet from the West line of North Garl Street (now Burlington Blvd.);
thence North $02^{\circ}22'25''$ East 390.02 feet parallel with said West line of North Garl Street to a point that is South $89^{\circ}09'19''$ East from the POINT OF BEGINNING;
thence North $89^{\circ}09'19''$ West 987.95 feet to the POINT OF BEGINNING.

SUBJECT TO and TOGETHER WITH easements, restrictions, exceptions and other instruments of record.

USE COVENANT



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