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Skagit County Auditor

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**COVENANTS RUNNING WITH THE LAND**

Grantor: **Jim and Karen Hadman**

Grantee: **Michael and Liz Bart**

Legal Description  
of Properties:

**Parcel A: Bart Property**

That portion of Lot 15B, lying northerly of the Samish Island Road, as shown on the face of the short plat, Skagit County Short Plat No. 60-88 approved March 1, 1989, and recorded March 28, 1989, in Volume 8 of Short Plats, page 119, under Auditor's File No. 8903280020, records of Skagit County, Washington; being a portion of Tract 15, Samish Island Estates, according to the plat thereof recorded in Volume 12 of Plats, page 69, records of Skagit County, Washington; and also being a portion of Government Lot 1, Section 34, Township 36 North, Range 2 east of the Willamette meridian.

Subject to: Restrictions, Reservations and Easements of record.

APN: 4403 000 015 0100

**Parcel B: Hadman Property**

Lot 12, "Plat of Samish Island Estates," according to the plat recorded in Volume 12 of Plats, pages 69 and 69A, records of Skagit County, Washington, being a portion of Section 35, Township 36 North, Range 2 East, W.M.

Subject to: Paragraphs A-C of Schedule B-1 of First American Title Company's Preliminary Commitment for Title Insurance No. 48552.

APN: 4403 000 012 0035

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement") is entered into by and between Plaintiffs Michael and Liz Bart ("the Barts") and Defendants Jim and Karen Hadman ("the Hadmans"), collectively "the parties".

### RECITALS:

WHEREAS, on FEBRUARY 27, 2011, the Barts and the Hadmans participated in an arbitration conducted by Philip E. Sharpe of Adelstein, Sharpe and Serka LLP on a Complaint filed by the Barts in Skagit County Superior Court, Case No. 10-2-01112-1. The arbitrator found the Barts to be the prevailing party in the arbitration and issued a written opinion attached hereto as **Exhibit A**.

WHEREAS, the parties have entered into this written Settlement Agreement for the purpose of implementing the arbitrator's decision of the parties' dispute and for the purpose of recording the Settlement Agreement in the public records of the Skagit County Auditor's office.

### AGREEMENT:

NOW, THEREFORE, in exchange for the promises and covenants set forth herein, the parties hereto agree as follows:

1. The Hadmans shall remove all marketable madronas on the east side of the Hadmans' home to the north of the Hadmans' driveway as depicted on the site map attached hereto as **Exhibit B** and incorporated herein by reference ("Site Map"). Unmarketable trees on the east side of the Hadmans' home to the north side of the paved driveway as depicted on the Site Map shall be reduced to fifteen feet. The lone madrona on the property line east of the barn depicted on the Site Map shall be removed. The leggy filbert and the "transformer" fir depicted on the Site Map shall be reduced to and maintained at a height not to exceed fifteen feet (15'). Any remaining trunks shall be maintained at fifteen feet and trimmed annually\*, as required. Such trunks may be used to support vines and habitat for birds and wildlife provided that such vines and habitat do not exceed the fifteen feet."

2. The Hadmans shall keep the "bird tree" birch, the "memorial" blue spruce, the Grand fir, and the three groups of madronas (some of which have multiple trunks), on the south side of their paved driveway and shall prune these trees of dead branches annually.\* The Barts offer to fund the initial trimming by Eager Beaver is accepted by the Hadmans. Subsequent trimming shall be the responsibility of the current owner of 5218 Filbert Lane.



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3. The Hadmans will continue to maintain the views which they established years ago. This view maintenance also includes the "transformer" fir and the bird snag. The Hadmans shall maintain the bird snag at its designated height of 18 feet, which is the approved variant height of their barn. The Hadmans shall prune these trees annually.\*

4. The Hadmans shall schedule all tree removal as well as the pruning of madrona trees for late summer of 2011. This work is to be completed no later than Sept. 30th. Deciduous trees and other species that are better suited to pruning (or canopy reduction techniques) in colder months shall be pruned during fall or winter of each year but no later than April 1 of each year.\*

5. The Barts request that the madrona in the NW corner of the Hadman property be removed. This tree was not included in the CC & R violation finding but in the interest of having this matter settled, the Hadmans agree to use the Olsen method of reducing the tree's crown height incrementally over three years in order to eventually reduce the crown to fifteen feet. This work shall also be done by September 30th of each year, starting in 2011. Once accomplished, the Hadmans shall maintain this tree annually\* at fifteen feet.

6. Any landscaping by the Hadmans or their successors and assigns, whether intentionally planted or naturally occurring, shall conform to this agreement in that it shall not be located in such a way as to impede or obscure the Barts' views to the water that are now open or will be opened by this proposal. Particularly, the Barts are concerned that moving the view to the north from the original Olson plan will place the new view directly into the birch and madronna trees that are on the Hadmans' west property line. As the Barts cannot be certain of this until the work is done, if this is a problem, the Hadmans agree to prune these trees back to the 15-foot height limit.

7. At the recommendation of the arbitrator, the Barts shall photograph the project immediately after the work is completed. These photographs shall serve as a reference for the view that has been agreed to be maintained annually.\*

8. The parties agree that both the arbitrator's decision and the terms of this Settlement Agreement shall be recorded in the Skagit County public records and shall constitute covenants running with the land which will be binding on the parties, and their respective heirs, successors and assigns.

9. It is the intention of both parties that these described actions (1-8) will resolve the problem of impeded water views. The Barts will issue a statement, as requested by the Hadmans, after the successful conclusion of these actions and after the view to the water through the Hadmans' property is adequately improved.



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\* The Barts are uncertain what the annual growth will be. The Barts will determine by September 30th, 2015 (one year after the NW madrona is finished being pruned down in height) if the annual requirement for pruning can be reduced to biennial in an effort to reduce the burden of compliance by the Hadmans.

10. Upon the signing of this Agreement, counsel for the Hadmans and the Barts will also sign a Stipulation and Order attached hereto as **Exhibit C** which will be filed in Skagit County Superior Court and recorded in the public records of the Skagit County Auditor's office.

11. This Agreement shall bind and inure to the benefit of the Hadmans and the Barts hereto and their respective heirs, successors, and assigns.

12. The parties acknowledge that each party has executed this Agreement freely, knowingly, and voluntarily and that each party has had legal counsel represent their interests with respect to this Agreement. No Interpretation Against Drafter. This Agreement is the product of negotiations among the parties hereto represented by counsel and any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived.

DATED this 28 day of August, 2011.

  
\_\_\_\_\_  
JIM HADMAN

  
\_\_\_\_\_  
KAREN HADMAN

  
\_\_\_\_\_  
MICHAEL BART

  
\_\_\_\_\_  
LIZ BART



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## Exhibit "A"

Bart v. Hadman  
March 15, 2011  
Excerpts of Arbitrator's Decision

- **Interpreting Covenants**

The primary objective of a court in interpreting covenants is to determine the intent of the Declarant. Words are to be given their ordinary meaning and if ambiguity exists, courts resort to evidence of surrounding circumstances in order to determine the intent of the Declarant.

- **Are the Hadmans maintaining a hedge within the meaning of the covenant?**

The restrictive covenants provide, in pertinent part, that:

"No hedge shall be erected, located, planted or maintained on any lot which would unreasonably obstruct views from any other lot...".

Looking at the language, the term "hedge", according to Webster's, is a "fence or boundary formed by a dense row of shrubs or low trees."

The Hadmans argue that a hedge must be manmade. I disagree. Some hedges are manmade while others are naturally occurring. One need only drive the roads of rural Ireland to see naturally occurring fuchsia hedges bordering the roads for miles on end. The covenants make no distinction between manmade and naturally occurring hedges. The Declarant, Mr. Ulfwengren, provided revealing testimony on this point. He stated that you don't "need to plant" a hedge but rather it "can be wild growth" and noted that he currently has property "with a natural growth hedge that I trim." When asked directly by counsel for the Hadmans "what constitutes a wall, fence or hedge" he answered "any growth which obstructs the view of the landowner behind." While I believe Mr. Ulfwengren's answer to be overly broad, as it would apply equally to a single tree as well as a row or bank of trees, whatever the case, it is clear to me that the grove of trees maintained by the Hadmans fall within the meaning of a hedge as that word was used by Mr. Ulfwengren in the covenants.



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In this instance, there is no question that the Hadmans are maintaining a hedge within the meaning of the covenants. Although it is not necessary to my decision, as I believe any hedge which is allowed to exist on a parcel of property which unreasonably obstructs the view from another lot would violate the covenants, the fact of the matter is that the Hadmans are actively maintaining the Madrona grove and associated growth. The testimony at trial is that they may have pruned dead limbs and have actively changed their gardening practices so as to avoid irrigating the Madrona trees in order to facilitate their health.

Based upon Mr. Ulfwengren's testimony, I am of the opinion that the Madrona grove and associated growth on the Hadman property is a "hedge" within the meaning of the restrictive covenants.

One interesting observation I would share relates to a comment that counsel for the Hadmans made in his closing argument. He stated that the community's vision is different than that of the Declarant, that the community values trees and wishes to strike a balance between the beauty of trees on the one hand and views on the other. I would point out that the community's vision, whatever it may be, is not relevant to determining the Declarant's intent. However, this position is seemingly inconsistent with the resolution passed by the Board of Directors on February 20, 2008, which interprets "hedge" as used in the covenant to mean "a barrier consisting of vegetation and trees that screens views of the water." (**Exhibit 27**). It is my understanding that that resolution was adopted by the membership at a general meeting. The Board's resolution embodies the view expressed by Mr. Ulfwengren when he said that "any growth which obstructs the view of the water" violates the covenants.

To reiterate, I find that the growth on the Hadman property consisting of the Madrona grove, the tree by the garage, the birch tree, the top fir, the grand fir referred to in the Olsen Report collectively constitute a hedge within the meaning of the covenant. I also conclude that the Hadmans' actions, in allowing the hedge to remain in place, not to mention actively nurturing it, constitutes the maintenance of a hedge within the meaning of the covenants.

- **Does the Hadman hedge unreasonably obstruct the view from the Barts' lot?**



I am mindful of the fact that the covenants do not prohibit views obstructions as long as they are not unreasonable. In order to determine whether a view obstruction is unreasonable, two questions must be asked and answered. First, what view is protected by the covenants and second, does the Hadman hedge unreasonably obstruct the protected view?

Returning to the first question, what view is protected, the parties have presented competing arguments. The Barts argue that it is the view of the water which the covenants seek to protect while the Hadmans argue that the covenants seek to protect a territorial view which would include, but not necessarily be limited to, the views of the water.

The answer to this question is to be found in the pivotal testimony provided by Mr. Ulfwengren. He stated that the "leading sales argument was a water view" and that it was his intent for every lot to have "a perpetual view of the Sound". Later he opined that there is "only one view - the waterfront view".

Mr. Ulfwengren's testimony is buttressed by the statements of his attorney, Colonel Betz, who testified that "Erik was very concerned that all lots have a view of the water." In response to an earlier inquiry, Mr. Betz wrote a letter dated the 19th day of May, 2004, opining that the covenants were intended to protect a "reasonable view to the water and a view to the south side of Samish Islands Estates." The testimony of Mr. Ulfwengren and Mr. Betz lead to the inescapable conclusion that the view which the covenants seek to protect is that of the water.

That leads to the second question, does the Hadman hedge unreasonably obstruct the view of the water from the Hadman lot?

In his opening statement, counsel for the Hadmans argued that it is important to reach a balance between views on the one hand and trees on the other. He urged that consideration to be given to what would be a common and realistic expectation given the language of the covenants. He also pointed out that it is not an all or nothing proposition --- clear cut versus unregulated growth --- but rather reaching an reasonable balance between the two. He quite correctly pointed out that the Hadmans have the right under the covenants to reasonably obstruct the Bart's view of the water.



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Conversely, the Barts have a right under the covenants to prevent the Hadmans from unreasonably obstructing their view of the water through the maintenance of a hedge.

This brings me to the hard part of this decision because it necessarily involves a subjective judgment on my part as to what constitutes a reasonable or unreasonable view obstruction. There is no way to avoid making a subjective judgment. In many instances the English language lacks precision and objectivity. Such is the case when determining whether something is reasonable or unreasonable. It is for this reason that we, in the law, commonly acknowledge that reasonable minds, viewing the same facts, may come to different conclusions.

In attempting to exercise subjective judgment which is consistent with the intent of restrictive covenants, I undertook two site visits at the request of counsel. I visited the site in the summer, before the arbitration took place, and also visited the site with counsel following the arbitration. On my second visit, I spent time sitting in various portions of the Bart home looking at the views from the living room, dining room, kitchen, breakfast area, and upstairs portions of the house. I must admit that I was taken by the view and found it to be quite nice. I could see parts of the water from most of the open areas of the Bart house.

After counsel and I left the Bart home, I drove around the island to look at various views and then returned to the site to look at the view from the Hadman house. I took out my notes of Mr. Ulfwengren's testimony and also looked at the photo of the filbert orchard which was introduced into evidence as **Exhibit 2**. I noted that at the time the declaration was imposed on the property, there was no growth on it of any sort other than the filbert trees themselves. Mr. Ulfwengren's testimony ran through my mind. He said that the "most valuable thing was the view". When asked which view, he answered, "what other view than the water?" I also recall his testimony concerning the first home which he constructed on a rear lot from which the "view was spectacular of the water." It was clear that Mr. Ulfwengren was attempting, through imposing the covenants, to transport the "front row" view to the rear lots in order to create value in the lots on the "back row".

Viewed in this context, I honestly cannot say that the Barts have the view of the water from the main living areas of their home, particularly on the first floor, which I think



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Mr. Ulfwengren was attempting to protect. At best, they have partially obstructed views of the water which clearly is not what Mr. Ulfwengren intended or expected at the time he recorded the covenants. I therefore conclude that the view of the water from the Bart house is unreasonably obstructed by the Hadmans' hedge in violation of the restrictive covenants.

I am going to order the Hadmans to remove those portions of the hedge which unreasonably obstruct the view from the Bart residence at their own expense. Although I appreciate that the Hadmans have offered to pay a portion of the cost of initial removal and limbing, counsel has reminded me that this is a precedent setting case. Given that fact, I would point out that it is the Hadmans, not the Barts, that are in violation of the covenants. It is not incumbent upon the Barts to pay any portion of the cost of remedying the Hadmans' violation. The Barts have offered to pay half the cost of the initial removal which is a neighborly gesture which I would encourage them to fulfill. However, I have no legal basis for ordering them to do so. The cost of remedying a violation of the covenants must be borne by the violator, and not the party whose rights have been violated.



Philip E. Sharpe, Jr., Arbitrator

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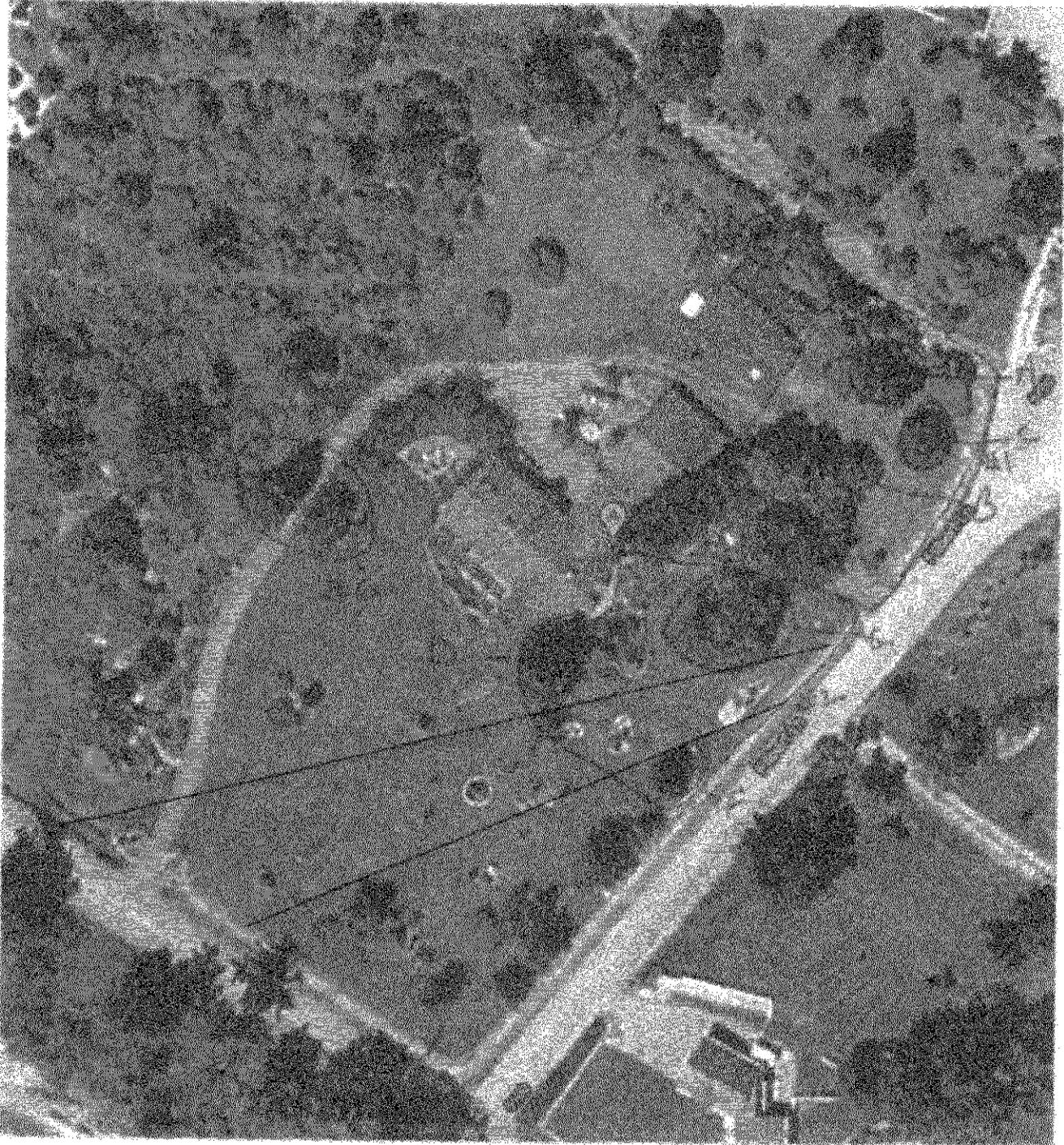


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Google maps

Exhibit B : PAGE 1

To see all the details that are visible on the screen, use the "Print" link next to the map.



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PRINT

Exhibit B (Site Map) Page 2: Glossary

All items refer to the Settlement Agreement numbered items:

#1 on the map refers to the Settlement Agreement, numbered paragraph 1. This region, encircled in red is the area bounded by the east side of the house, north of the paved driveway.

Within #1, item A refers to the lone madrona  
Within #1, item B refers to the leggy filbert  
Within #1, item C refers to the transformer fir

#2 on the map refers to the Settlement Agreement, numbered paragraph 2. This area is South and East of the house.

Within #2, item D refers to the bird tree birch  
Within #2, item E refers to the memorial blue spruce  
Within #2, item F refers to the grand fir  
Within #2, item G refers to the existing madronas

#3 on the map refers to the Settlement Agreement, numbered paragraph 3. This area is both north and east of the barn. The other view corridor is referred to in the sketch provided by the Hadmans at the arbitration hearing (see page 2 of Maps).

Item #3A is the bird snag  
Item #1C is the transformer fir

#5 on the map refers to the Settlement Agreement, numbered paragraph 5.

The item circled is the NW madrona.

#6 on the map refers to the Settlement Agreement, numbered paragraph 6.

The items circled include the birchs and madronas referenced in paragraph 6 of the Settlement Agreement.

The area bounded by the 2 red lines defines one of the views that were opened years ago as referenced in item # 3 of the settlement agreement.



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