

AGREEMENT AND DECLARATION OF COVENANT

THIS AGREEMENT and Declaration of Covenant (hereinafter referred to as the "Agreement"), made and entered into this 27 day of February, 1990, by and between WASHINGTON MUTUAL SAVINGS BANK, (hereinafter referred to as the "Owner"), GREENSTONE CORPORATION, (hereinafter referred to as the "Developer"), and SPOKANE COUNTY, (hereinafter referred to as the "County"), jointly hereinafter referred to as the "Parties".

R E C I T A L S :

(1) Owner currently has title to a certain tract of land to be finally platted into lots, blocks and streets, known as Bella Vista Division No. 3, hereinafter referred to as the "Subdivision", and being more particularly described in Attachment "A", attached hereto and incorporated by reference herein.

(2) Developer is the sponsor of Bella Vista Division No. 3, and the Owner intends to convey said property by deed to the Developer immediately following final plat approval.

(3) Said property represents a portion of the Bella Vista preliminary plat, PE-1354-79, portions of which have received final plat approval as Bella Vista Division No. 1 and Bella Vista Division No. 2.

(4) It is intended by the Parties that a single integrated system of stormwater collection and disposal will be installed within those portions of the Bella Vista preliminary plat receiving final plat approval to provide stormwater facilities to residents therein. Additional service areas outside the preliminary plat may be integrated into this system at the County's discretion.

(5) Provisions have been made to install stormwater collection and disposal facilities in Bella Vista Division No. 1 and Bella Vista Division No. 2 and to provide for maintenance and operation of the same by Spokane County.

(6) Pursuant to RCW Chapter 36.89 and Section 9.14.220 of the Spokane County Code, the County may assume maintenance and operation responsibility of drainage facilities which lie outside the County road right-of-way, under certain conditions, and may levy service charges on the properties served thereby.

(7) Developer has agreed to install stormwater facilities in Bella Vista Division No. 3 as a condition of plat approval, but is in need of a governmental agency to assume responsibility for the continuous and satisfactory operation and maintenance of the stormwater facilities.

(8) The County is willing to assume the responsibility of operation and maintenance of the stormwater facilities on the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties hereto agree as follows:

T E R M S:

Section 1: CONSTRUCTION

The Developer at his sole expense shall construct stormwater collection facilities to a capacity and design satisfactory to the County. The plans and specifications for this construction shall be approved by the County Engineer prior to construction. The design shall conform to Board of County Commissioners Resolution No. 80-1952, as amended. For the purpose of this Agreement, the "Subdivision Stormwater Facilities" shall be the Facilities as indicated on the approved plans entitled Bella Vista Division No. 3 Sheet plans, and shall refer to all storm sewer lines, manholes, and appurtenant facilities. There shall be no cost to the County for the construction of the Subdivision Stormwater Facilities. The Subdivision Stormwater Facilities shall be constructed and accepted by the County for operation and maintenance no later than the 1st day of November, 1990. To the extent that the Subdivision Stormwater Facilities are not constructed and accepted by the County for operation and maintenance by this date, the County may, at its option, without the necessity of any notice whatsoever, look to the security as provided for in paragraph 15 to complete the construction of the Subdivision Stormwater Facilities. The Developer shall be responsible for connecting the Facilities to the integrated system of stormwater collection and disposal for Bella Vista (hereinafter "Integrated System").

Section 2: RIGHT OF INSPECTION

The County and the Developer mutually agree that the County may perform inspections of the Subdivision Stormwater Facilities during the course of construction to determine if the Facilities are being constructed and installed pursuant to the approved plans and specifications. All costs of said inspection shall be borne solely by the Developer. Said costs include but are not necessarily limited to labor (including all fringe benefits) and mileage. The County shall to the extent that variations from the approved plans and specifications are observed notify the

Developer of any work found to be unsatisfactory and the Developer shall immediately correct the same at no cost to the County.

Section 3: CERTIFICATION

The County will assume no responsibility for the Subdivision Stormwater Facilities until the Facilities are complete and the Developer furnishes the County with a certification by a registered professional engineer that the system has been constructed in accordance with the approved construction plans and specifications therefore.

Section 4: EASEMENTS

The Developer shall furnish the County with perpetual easements and/or deeds for all portions of the Subdivision Stormwater Facilities lying outside of dedicated public rights-of-way.

Section 5: WARRANTY

All work performed by the Developer or his agents and all facilities installed in connection with the construction of the Subdivision Stormwater Facilities shall be guaranteed by the Developer for a period of twelve (12) months from the date of the acceptance as provided in Section 7 below. The Developer also warrants that the Subdivision Stormwater Facilities will be adequate to serve the Subdivision at full development, which will consist of ten (10) lots utilizing the Subdivision Stormwater Facilities.

For the purposes of this Agreement, costs to the Developer by virtue of this warranty shall not be considered maintenance and operation costs.

Section 6: ADDITIONS

No additional service areas outside the Subdivision shall be connected during the life of this Agreement to the Subdivision Stormwater Facilities without the express written approval of the County.

Section 7: ACCEPTANCE

Upon completion of any phase of the Subdivision Stormwater Facilities and certification as provided above, the County shall make a completion inspection and upon finding a phase of the system satisfactory shall accept that phase of the system for operation and maintenance subject to the Developer warranty. Acceptance of any phase of the system for operation and maintenance by the County shall be made possible by the Developer prior to establishment of the roads and occupancy of the Sub-

division. The Developer shall advise all persons, firms or corporations employed by him to sell lots within the Subdivision of the necessity of "acceptance" of the Subdivision Stormwater Facilities for operation and maintenance prior to the establishment of roads and occupancy of any dwelling units and/or lots on the property serviced by the Subdivision Stormwater Facilities.

Section 8: OPERATION AND MAINTENANCE

The County shall provide the personnel, vehicles, additional equipment other than provided for above, and materials necessary to operate and maintain the Subdivision Stormwater Facilities and shall keep an accurate record of the costs thereof and the costs to operate and maintain the Integrated System. Such records shall be open to the inspection of the Developer.

Section 9: ANNUAL CHARGES

The County shall be responsible for the collection of annual service charges for operation and maintenance of the Integrated System in accordance with the following schedule:

For each Unit and/or Lot Connected to the Subdivision Stormwater Facilities

Single Family Residence

Annual Cost
\$25.00
~~\$8.00~~ per Unit.

JMP
ML
SD

Annual service charges shall be applicable for each unit and/or lot beginning the month following the date of acceptance of that part of the Facilities serving such unit as provided above in Section 7. Charges shall be on a calendar year basis, except that the charge for the first year of service shall be prorated for that portion of the calendar year remaining after service charges become effective. The bill for the first calendar year, or portion thereof, shall be considered delinquent if unpaid within sixty (60) days after the billing date. For each calendar year following the calendar year in which service was commenced, annual billings shall be mailed by February 28th of each year, and shall be considered delinquent if unpaid on April 30th of the same year. All service charges collected shall be deposited in a special fund in the County Treasury to be used only for the purpose of maintaining and operating the Integrated System.

Section 10: REVISION OF ANNUAL CHARGES

The above schedule of annual charges shall remain in force and effect until such time as a revised schedule of charges is approved by resolution of the Board of County Commissioners after public notice of the intention to revise charges and public hearing thereon. The effective date of the revised charges shall be as provided by such resolution but no less than thirty (30) days after the adoption of such resolution. The Developer shall

be responsible for insuring that all initial occupants of any dwelling unit built on lots within the Subdivision are aware of the provisions within this section concerning fees and also the provisions within Section 7 concerning the necessity of the County's acceptance of the Facilities prior to occupancy.

Section 11: EXCESS OR DEFICIT COSTS

To the extent that the annual charges received from units served by the Integrated System exceed the operation and maintenance cost of the Integrated System, it is understood and agreed by the Parties that said excess moneys shall be rebated to each unit. If the annual charges are not sufficient to cover the operation and maintenance costs of the Integrated System, the schedule of charges shall be increased as provided in Section 10.

Section 12: DELINQUENT CHARGES

Delinquent charges shall bear interest at the rate of twelve percent (12%) per annum, computed on a monthly basis from the date of delinquency as provided in this Agreement. The County shall have a lien as provided in RCW 36.89.090 and Section 9.14.225 of the Spokane County Code.

Section 13: SURVIVAL OF COVENANTS AND BINDING EFFECT

All of the promises, covenants, terms and conditions of this Agreement shall survive the conveyance hereunder, and this Agreement shall extend to and bind the successors and assigns of the respective Parties hereto. The terms of this Agreement shall be included in the sales agreements conveying any part of the plat of Bella Vista Division No. 3 and shall run with the land.

Section 14: TERM

This Agreement shall remain in full force and effect until the date of Conveyance as provided in paragraph 17 herein.

Section 15: SECURITY

The Developer shall provide to the County in a form approved by the Prosecuting Attorney, Security in the amount of \$ 1,600.00. Said security can be reduced as portions of the project are constructed and approved. Upon acceptance in accordance with Section 7 herein, the Security may be reduced to \$ 160.00. Security shall remain in effect for one (1) year after acceptance. Said Security will insure and guarantee the faithful performance of all the terms, conditions and requirements of this Agreement particularly including, but not limited to, construction and warranties.

Section 16: TAXES

The Developer shall be responsible for paying any and all real, personal, and other taxes as come due and are owing on the Subdivision Stormwater Facilities or real property housing the same until the Subdivision Stormwater Facilities are conveyed as provided for in Section 17 herein. In the event that any taxes are not paid when they come due and owing, the County shall have the right to immediately terminate any of its obligations under this Agreement to operate or maintain the Subdivision Stormwater Facilities upon thirty (30) days notice to the Developer, during which time the Developer may cure said breach, and the County reserves the right to pursue any other legal remedies available for the Developer's breach of this provision.

Section 17: CONVEYANCE AND REVERSION

The County is in the process of developing a Comprehensive Stormwater Management Program and Plan. It is possible that part or all of the Subdivision Stormwater Facilities and the Integrated System may be incorporated into this Plan. At such time as part or all of the Subdivision Stormwater Facilities are proposed to be incorporated, the County will give the Developer thirty (30) days notice of such action. The Developer shall convey such portions of the Subdivision Stormwater Facilities and all rights and appurtenances thereto as necessary. Conveyance shall be at no cost to the County; and shall be accomplished by a Bill of Sale for all real and personal property involved. Those facilities, if any, as determined by the County Engineer, no longer necessary for the Subdivision Stormwater Facilities shall be reconveyed and returned to the Grantor.

Section 18: COMPREHENSIVE STORMWATER MANAGEMENT PROGRAM

The Developer or successor(s) in interest agree to join in any Comprehensive Stormwater Management Program and to pay such rates and charges in addition to or in lieu of those stated in Section 9 above as may be fixed through public hearings for service or benefit obtained by the planning, establishment or maintenance of stormwater control facilities in addition to or in lieu of the Subdivision Stormwater Facilities.

Section 19: VENUE

In the event an action is brought involving a breach of warranty or other action involving this Agreement, it is agreed that the venue of such action shall be in Spokane County, and it is further agreed that the prevailing party shall be entitled to attorney's fees as adjudged by the court to be reasonable.

Section 20: FINAL PLAT APPROVAL

This Agreement shall become null and void unless the Bella Vista Division No. 3 plat receives final plat approval by Spokane County. In the event that Owner fails to convey said plat to the Developer following final plat approval, the Owner agrees not to sell, transfer or apply for building permits respecting any lots in the plat of Bella Vista Division No. 3 unless and until an agreement has been executed with Spokane County by Owner, or Owner's transferee, providing for the installation of stormwater facilities on substantially similar terms as this Agreement.

SPOKANE COUNTY:

By Patricia C. Mummy
Chairman, Board of County
Commissioners of Spokane
County, Washington

ATTEST:

WILLIAM E. DONAHUE,
Clerk of the Board

By Donald Matzger
Deputy Clerk

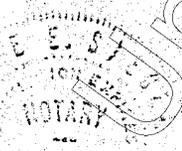
GREENSTONE CORPORATION (DEVELOPER):

By Jim Frank
Jim Frank, President

STATE OF WASHINGTON)
) ss:
County of Spokane)

On this 14th day of February, 1990, personally appeared before me JIM FRANK to me known to be the President of Greenstone Corporation, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.



Joanne A. Sirel
Notary Public in and for the
State of Washington, residing
at Spokane. My commission ex-
pires 12/10/92

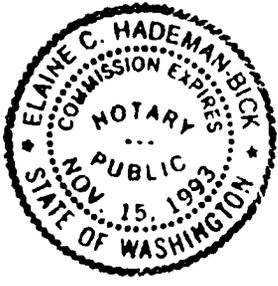
WASHINGTON MUTUAL SAVINGS BANK (OWNER):

By *Sean J. Sullivan*
Vice President (Title)

STATE OF WASHINGTON)
County of KING) ss:
~~Spokane~~

On this 16th day of FEBRUARY, 1990, personally appeared before me SEAN J. SULLIVAN to me known to be the VICE PRESIDENT of Washington Mutual Savings Bank, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.



Elaine C. Hademan Bick
Notary Public in and for the State of Washington, residing at Spokane. My commission expires JAN 15, 1993

APPROVED AS TO FORM:

By *Michael J. Oungy*
Deputy Prosecuting Attorney

December 12, 1939

LEGAL DESCRIPTION
Final Plat
of
BELLA VISTA DIVISION NO. 3

A parcel of land in the Northeast Quarter of Section 2, T.24 N., R.44 E., W.M., described as follows:

Beginning at the southwest corner of Lot 29, Block 5 of BELLA VISTA DIVISION NO. 2, per final plat recorded in Volume 19 of Plats, pages 4 and 5, in the Spokane County Auditor's Office; thence southeasterly along the southwesterly boundary of said final plat the following six (6) courses:

- (1.) S.14°27'00"W. a distance of 60.00 feet;
- (2.) S.75°33'00"E. a distance of 108.46 feet to the beginning of a curve concave to the southwest having a radius of 30.00 feet;
- (3.) southeasterly along said curve through a central angle of 84°54'28" an arc distance of 44.46 feet;
- (4.) S.09°21'28"W. a distance of 161.87 feet;
- (5.) S.80°38'32"E. a distance of 245.70 feet;
- (6.) S.09°36'31"W. a distance of 161.23 feet to the southwest corner of Lot 2, Block 7 of said BELLA VISTA DIVISION NO. 2; thence N.80°31'00"W. a distance of 35.00 feet; thence S.09°21'28"W. a distance of 340.08 feet; thence N.80°38'32"W. a distance of 400.00 feet; thence N.09°21'28"E. a distance of 476.57 feet; thence N.14°27'00"E. a distance of 289.99 feet; thence S.75°33'00"E. a distance of 34.35 feet to the point of beginning.

Situate in the County of Spokane, State of Washington

RECEIVED
FILED OR RECORDED

REQUEST OF *Co Ery*
MAR 2 4 05 PM '90

WILLIAM H. HAHUE
AUDITOR
SPOKANE COUNTY, WASH.
SAMPSON

Interoffice