



3042434  
Page: 1 of 8  
07/23/96 04:03P  
Thurston Co., WA

When Recorded Mail To:

Robert H. Raymond  
Cushman, Raymond & Middleton, PS  
924 Capital Way, S.  
Olympia, WA. 98501

Real Estate Excise tax paid None  
Receipt no. None Date 7-23-96  
Michael J. Murphy, Thurston Co. Treas  
By D. Thompson Deputy

Auditor's Recording Information

**CORRECTED DRAINAGE EASEMENT AND AGREEMENT**

**JAMES W. CURNUTT**, as his separate estate, **DEAN L. WILLIE**, a single man, and **WAIVANNE WILLIE-DUEBER**, as her separate estate, hereafter Grantors, for and in consideration of the following terms, covenants and conditions and to correct the description contained in that instrument recorded with the Auditor of Thurston County, Washington on June 24, 1996 under file 3036946 do hereby agree, covenant and convey to **DUWAYNE W. KRIEGER** and **M. ANN KRIEGER**, husband and wife, hereafter Grantees, and to Grantees' heirs, successors and assigns, an easement for drainage purposes on, over and across the following described property, to wit:

In Thurston County, Washington.

A strip of land twenty feet in width, fifteen (15.00) feet thereof lying to the south and the east and five (5.00) feet thereof lying to the north and west of the following described line:

Commencing at the west one-quarter corner of Section 22, Twp. 18 North, Rge. 2 West, W.M.; thence S 88° 08' 51" E a distance of 313.00 feet along the east-west centerline of said section, being also the centerline of Bella Vista Avenue as shown on the Plat of Lemon Addition recorded in Volume 5 of Plats at Page 7, records of Thurston County, to the Point of Beginning of this described centerline; thence S 1° 51' 09" W 380.81 feet; thence along a tangent curve to the right having a radius of 20.00 feet and a central angle of 90° 00' 00"; thence ~~S~~N 88° 08' 51" W 150.00 feet to the centerline of the natural drainage course situate on this property, thence southerly along said centerline to the south line of grantors' property and the terminus of this described centerline.

The location or alignment of the aforesaid strip of land and the location of any drainage facilities and improvements installed therein may be modified from time to time by Grantors, or any of them, and at the expense of the Grantor or Grantors effecting such modification, in order to accommodate any proposed future uses of the servient estates, provided that such modification does not adversely affect the storm drainage facilities installed by the Grantees, or their heirs, successors or assigns, within the boundaries of their Wellington West developments, or the serviceability or utility thereof.

COVENANTS AND AGREEMENTS:

The Grantors and Grantees further covenant and agree as follows:

1. The aforesaid easement is intended by all parties and other signatories hereto as an artificial drainage channel for storm water discharge, and is not intended to create any wetland subject to environmental regulation.

2. Grantees and their heirs, successors and assigns, shall be responsible for all costs to install the initial drainage system within the easement conveyed hereby and for any maintenance thereof required by the City of Olympia according to separate agreements between the City and Grantees. Any costs future changes to the location or improvements of the drainage system and maintenance therefor will be born by the party or parties requesting the same, or upon such other terms, covenants and conditions as they may then agree.

3. Grantees, for themselves, their heirs, successors and assigns, hereby covenant that they shall apply to the City of Olympia by or before January 1, 1997, for a Conditional Use Permit to allow diversion of the waters currently flowing or intended to flow in the natural drainage course (classified by the City of Olympia as a Class V Stream) over the servient estate, and which natural drainage course is situated westerly of this easement, into this easement and the improvements installed herein. Grantees further covenant for themselves, and their heirs, successors and assigns that they shall diligently pursue said application in order to obtain the same permit. Failing such application or the diligent pursuit of the same, Grantees shall assign their rights to make such application to Grantors together with the right to use any and all engineering design documents, reports and surveys in Grantee's possession which are related to said natural drainage course and the improvements installed in this easement for the purpose of allowing Grantors to pursue said application. Furthermore, if Grantees fail to apply for said permit by the date

DRAINAGE EASEMENT  
AND AGREEMENT

Page 2



3042434  
Page: 2 of 8  
07/23/96 04:03P  
Thurston Co, WA

recited hereinabove, or fail diligently to pursue approval of the same, Grantees shall pay Grantors the sum of Five Thousand dollars (\$ 5,000.00), which sum shall be applied by Grantors to the application and approval of such conditional use permit.

4. In the event the initial drainage ditch and related improvements constructed within the easement requires maintenance or repair to avoid damage to the servient estate, Grantors may by written notice to Grantees require the same to be done at Grantee's expense. In the event Grantees fail to initiate such maintenance or repair within thirty (30) days of receipt of such notice, Grantors may enter onto the easement and cause the same to be done at Grantees' expense unless such delay was unavoidable and caused by inclement weather or other conditions not of Grantees' making; provided that in the event the defects to the ditch requiring such maintenance or repair pose an imminent danger to the life or safety of any person or property on the servient estate, then Grantors may enter and effect such maintenance or repairs as are necessary to protect that life or property without the need for prior notice, in which event the reasonableness of the maintenance and repairs and the costs therefore shall be determined afterward by negotiations of the parties. In the event no agreement can be reached between the parties as to the necessity or reasonableness of the maintenance or repairs effected by Grantors or the costs therefor, the same and the respective obligations of the parties shall be determined by the Superior Court for the State of Washington in Thurston County, and the parties hereby consent to the jurisdiction and venue of that Court for such claims. Nothing in this clause shall create or be deemed to create any right in Grantors to damage or destroy the drainage system installed in the easement pursuant to this agreement, nor to effect any repair or maintenance to the drainage system installed to serve the Wellington West development situated outside the easement granted hereby; but neither shall it prohibit or be deemed to prohibit Grantors from relocating or modifying the easement or drainage facilities elsewhere on Grantors' respective properties as provided for hereinabove.

5. The drainage system to be installed in this easement shall be constructed according to designs prepared and certified by a licensed engineer and approved by the City of Olympia, and shall include, without limitation, rip-rap in the circular curve situated at or about stations 3+60 and 3+92 and also at the outfall to the south and west according to the plans prepared by Howard Godat and Associates in December, 1995.

6. The drainage ditch accommodated by this easement shall be moved from its current location along the north/south course, between stations 0+00 and 3+60 more or less, to a parallel course situated approximately 15 feet to the east which is to be an

DRAINAGE EASEMENT  
AND AGREEMENT

Page 3



3042434  
Page: 3 of 8  
07/23/96 04:03P  
Thurston Co, WA

extension of the surface drainage channel currently in place along the westerly side of the Wellington West detention pond. This relocation is to occur by or before September 1, 1996.

7. Excavation for the relocated ditch is to proceed in such a manner that the excavated materials are stockpiled along the westerly and northerly side of the new ditch to ensure that the portion of Lemon Addition east of the ditch may properly drain.

8. Stumps, trees, brush and other organic materials removed or destroyed during construction of the original and the new ditches shall be removed from the Grantors' property and disposed of as required by law at the Grantees' expense no later than September 1, 1996 or, in the alternative, Grantees shall post with Grantors a bond in the amount of \$5,000.00 to assure that the same shall be done.

9. Grantees shall replace any fir seedlings on the servient estate damaged during the course of construction of the drainage improvements.

10. Grantees shall pay Grantors the sum of ~~Eight~~ <sup>Nine</sup> Hundred ~~Ninety~~ Eighty Dollars (\$989.00) to compensate Grantors for legal fees in reviewing this agreement.

11. In the event of any litigation arising out of this agreement, whether for damages or to enforce any term or covenant herein, the prevailing party shall be entitled to an award of his or her costs of suit and reasonable attorney's fees.

12. The parties warrant that they are the respective owners of the dominant and servient estates affected by the above easement, and that they have the right, power and authority to execute this instrument and bind their respective lands.

13. The easement and covenants herein contained touch and concern the lands of the Grantors and Grantees, and the same shall run with the respective lands of each.

14. In the event any part of this easement or agreement is found to be void or unenforceable by a court of competent jurisdiction, such finding shall in no way affect the balance of this easement and agreement, which shall remain in force and effect to the fullest extent possible.



CUSHMAN RAYMOND & MIDDLETON ERS \$15.00

3042434  
Page: 4 of 8  
07/23/96 04:03P  
Thurston Co, WA

DONE this 23<sup>rd</sup> day of July, 1996.

GRANTORS:

Dean L. Willie  
Dean L. Willie

Waianne Willie-Dueber  
Waianne Willie-Dueber

James W. Curnutt  
James W. Curnutt

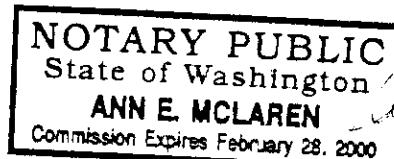
GRANTEES:

DuWayne W. Krieger  
DuWayne W. Krieger

M. Ann Krieger  
M. Ann Krieger

ACKNOWLEDGED AND APPROVED BY  
City of Olympia:

By: \_\_\_\_\_



DRAINAGE EASEMENT  
AND AGREEMENT

Page 5

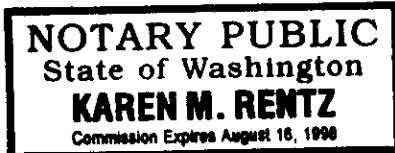


3042434  
Page: 5 of 8  
07/23/96 04:03P  
Thurston Co, WA

STATE OF WASHINGTON )  
COUNTY OF Thurston ) :ss

On this day personally appeared before me  
James W. Curnutt, to me known to be the  
individual(s) described in and who executed the within and  
foregoing instrument, and acknowledged that he/she/they signed the  
same as his/her/their free and voluntary act and deed for the uses  
and purposes therein mentioned.

July GIVEN under my hand and official seal this 19th day of  
, 1996.



Karen M. Rentz

Print Name: Karen M. Rentz  
Notary Public in and for the  
State of Washington, residing  
at Shelton  
My commission expires: 8-16-98

STATE OF WASHINGTON )  
COUNTY OF THURSTON ) :ss

On this day personally appeared before me Dean L. Willie, to me known to  
be the individual described in and who executed the within and foregoing  
instrument, and acknowledged that he signed the same as his free and voluntary  
act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 19th day of July, 1996.



Karen M. Rentz

Print Name: Karen M. Rentz  
Notary Public in and for the State  
of Washington, residing at Shelton  
My commission expires: 8-16-98

DRAINAGE EASEMENT  
AND AGREEMENT

Page 6

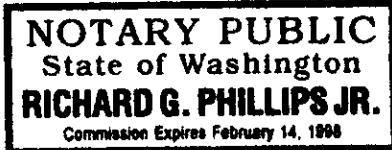


3042434  
Page: 6 of 8  
07/23/96 04:03P  
Thurston Co, WA

STATE OF WASHINGTON )  
COUNTY OF Thurston ) :ss

On this day personally appeared before me  
Wayne Willie Dueber, to me known to be the  
individual(s) described in and who executed the within and  
foregoing instrument, and acknowledged that he/she/they signed the  
same as his/her/their free and voluntary act and deed for the uses  
and purposes therein mentioned.

GIVEN under my hand and official seal this 27<sup>th</sup> day of  
July, 1996.

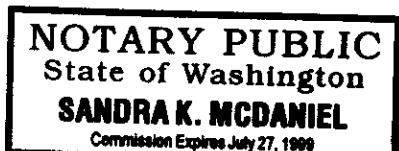


Richard G. Phillips Jr.  
Print Name: Richard G. Phillips Jr.  
Notary Public in and for the  
State of Washington, residing  
at Olympia.  
My commission expires: 2-14-98.

STATE OF WASHINGTON )  
County of Thurston ) ss.

On this day personally appeared before me DuWayne W. Krieger  
and M. Ann Krieger, husband and wife, to me known to be the  
individuals described in and who executed the within and  
foregoing instrument, and acknowledged that they signed the same  
as their free and voluntary act and deed, for the uses and  
purposes therein mentioned.

GIVEN under my hand and official seal this 23<sup>rd</sup> day of  
July, 1996.



Sandra K. McDaniel  
\_\_\_\_\_  
**Sandra K. McDaniel**  
(Printed Name)  
NOTARY PUBLIC in and for the State  
of Washington, residing at Olympia.  
Commission expires: 7-27-98

DRAINAGE EASEMENT  
AND AGREEMENT

Page 7



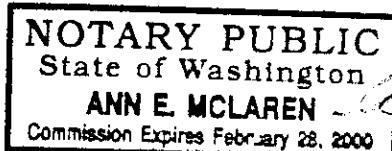
3042434  
Page: 7 of 8  
07/23/96 04:03P  
Thurston Co, WA

CUSHMAN RAYMOND & MIDDLETON EAS \$15.00

STATE OF WASHINGTON )  
:ss  
COUNTY OF Thurston )

On this day personally appeared before me  
M. Ann Krieger, to me known to be the  
individual(s) described in and who executed the within and  
foregoing instrument, and acknowledged that he/she/they signed the  
same as his/her/their free and voluntary act and deed for the uses  
and purposes therein mentioned.

GIVEN under my hand and official seal this 23<sup>rd</sup> day of  
July, 1996.



*Ann E. McLaren*  
Print Name: Ann E McLaren  
Notary Public in and for the  
State of Washington, residing  
at Olympia, Washington.  
My commission expires: 2/28/2000



3042434  
Page: 8 of 8  
07/23/96 04:03P  
Thurston Co, WA