

ORIGINAL

REC NO. 32689
CITY OF BELLEVUE
DATE 8/13/02
M-TORNOW
CITY CLERK'S OFFICE

**41.5 Open Space
DEDICATION AGREEMENT**

Forty-One Point Five Homeowners Association, hereinafter referred to as Grantor, hereby agrees to convey to the CITY OF BELLEVUE, hereinafter referred to as Grantee, and Grantee hereby agrees to accept, the real estate, identified as Tract A – Open Area and Tract B – Open Area, and contained by that certain plat entitled Forty-One Point Five recorded on the 8th day of March, 1978, in Book 106 of Plats at Page(s) 35-37 of Records of King County Auditor, King County, State of Washington, hereinafter referred to as "Property", described in Exhibit 1, attached hereto and, by this reference, incorporated herein under the following terms and conditions:

Purchase Price:

The Property shall be conveyed to the Grantee for mutual benefits and public uses. subject to easements, covenants, conditions and restrictions.

Grantee Agrees to the following:

1. Manage and maintain those areas in Tract "A" and Tract "B", as identified in Exhibit 1, as permanent open space for all purposes that benefit public health, safety and welfare including but not limited to buffering and protecting native plant and wildlife habitat; controlling surface water runoff and erosion; maintaining slope stability; trails and passive recreation opportunities and visual and physical buffering; except for the removal of diseased or dying vegetation which presents a hazard or implementation of a Natural Resource Enhancement Plan, Exhibit 2, that meets the requirements of City of Bellevue code.
2. Manage and maintain those areas in Tract "B", as identified in Exhibit 1, as developed park land that is managed, maintained and designed to meet the demand for recreation opportunities on a neighborhood scale as defined in the Park and Open Space Plan, and the Natural Resource Enhancement Plan, Exhibit 2.

Grantee Contingencies:

This transaction is contingent upon the following, prior to City Council action:

1. Review and approval by the City of Bellevue's Attorneys office.
2. Review and approval of easements, covenants, conditions and restrictions.

3. Review and approval of written notification that Grantor has met the requirements to transfer the Properties to the Grantor, as outlined in Grantors Homeowner Association By-Laws. Grantee
TOR
4. Acceptance of Properties with encroachment, provided the Grantor performs the following actions:
 - a. Grantor shall submit written documentation to private property owners residing within Horizon East Sub-division, who are encroaching onto Property, stating that property owner is to remove encroachment within "90" days, and have the Property restored to like or better condition using native plants as approved by the Grantee's Parks and Community Services Department.
 - b. If private property owners residing within Horizon East Sub-division, fail to remove encroachments, Grantor will submit a request to the City of Bellevue Code Enforcement, and if necessary, City of Bellevue Mediation Program, to assist in having encroachments removed.
 - c. Grantor shall submit written documentation to private property owners within 41.5, who are encroaching onto Property, stating that property owners are to remove encroachment, and have the Property restored to like or better condition using native plants as approved by the City of Bellevue, Parks and Community Services Department. The Grantee will accept a notarized letter from private property owner stating that within 120 days following closing, they will work with the Grantee's, Parks and Community Services Department to remove the encroachments and restore the site with native plant materials, during a City sponsored Stewardship Saturday program.

Following review and approval of Items 1 through 4c herein, review and approval by the Bellevue City Council is required.

Grantor Contingencies:

This transaction is contingent upon the following:

Review and approval by the Grantor, including Grantors' Homeowner Association Board and by the consent of the required number of platted lots, as outlined in the Grantors Homeowners Association By-Laws.

Hold Harmless:

A. The Grantor shall protect, defend, indemnify, and save harmless the City, its officers, employees, and agents from any and all costs, claims, judgements, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Grantor, its officers, employees, and/or agents in the performing this contract. The Contractor agrees that its obligations under this subparagraph extends to

any claim, demand, and/or cause of action brought by, or on behalf of any of its employees or agents. For this purpose, the Grantor, by mutual negotiation, hereby waives, as respects the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the City incurs any judgement, award, and/or cost arising therefrom including attorney's fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Grantor.

B. The Grantee shall protect, defend, indemnify and save harmless the Grantor, its officers, employees and agents from any and all costs, claims, judgements and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the Grantee, its officers, employees and agents in performing this agreement. The Grantee agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Grantee, by mutual negotiation, hereby waives, as respects of the Grantor only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the Grantor incurs any judgement, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Grantee.

C. The grantee specifically agrees to protect, defend, indemnify and hold harmless the 41.5 Homeowners Association and all of the landowners within that subdivision from any dispute or claim that arises as a result of encroachment by homeowners in the Horizon East Subdivision, provided that 41.5 Homeowners Association and landowners fully cooperate with the Grantee in such claim or dispute.

Indemnification Hazardous/Environmental Conditions:

Grantor has not used the Property for the manufacture, treatment, storage, release, dumping or disposal of hazardous materials of any kind nor is Grantor aware of any previous use of the property for such purposes. To the best of Grantor's knowledge, the Property is not in and has never received notice of violation of federal, state or local ordinance, rule, regulation, order or requirement relating to environmental conditions or hazardous material.

Closing Date:

The closing date shall be no later than September 1, 2002.

Escrow and Closing Costs:

Escrow services shall be provided by and closing shall take place at Washington Title Company, 155 108th Avenue N.E., Suite 150, Bellevue, Washington, 98004. Grantee will be responsible for closing costs, not to exceed \$3,000. If the closing costs exceed \$3,000.00, then any excess will be split equally between the City of Bellevue and the 41.5 Homeowners Association.

Conveyance:

Grantor shall execute and deliver to Grantee a Statutory Warranty Deed conveying the Property, subject to easements, covenants, conditions and restrictions.

Possession:

Grantee shall be entitled to possession of the Property upon closing.

Prorations:

General real property taxes, water and other utility fees shall be prorated to the date of closing.

Maintenance:

At closing, Grantor shall pay \$0 to the Grantee towards on-going maintenance of the properties.

Brokerage Agreements:

Neither Grantee nor Grantor has entered into any brokerage or agency agreements for this transaction.

So agreed this 27 day of June, 2002.

GRANTOR: FORTY-ONE POINT FIVE HOMEOWNERS ASSOCIATION
(Two Required by Grantor)

By: Trinity Grubbs
_____, Title: President

Date 6/27/02

By: J. TRUD
_____, Title: 6/27/02

GRANTEE: CITY OF BELLEVUE

By: [Signature]

Approved as to form:

By: [Signature]
Assistant City Attorney

Commitment No. R263289-2

SCHEDULE A CONTINUED

4. The land referred to in this Commitment is described as follows:

Tracts A and B, Forty-One Point Five, according to the plat thereof recorded in Volume 106 of Plats, page(s) 35 through 37, in King County, Washington.

END OF SCHEDULE A