

JERRY MCINTURFF
SKAGIT COUNTY AUDITOR

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SKAGIT COUNTY WASHINGTON

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RECORDED FILED
REQUEST OF Thompson
1375 mt Olympus Dr NW
Issaquah WA 98027

Amount Paid \$
By Skagit Co. Treasurer
Deputy
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THIS EASEMENT AGREEMENT is entered into this 23rd day of September, 1991 by and between THE BANK OF CALIFORNIA, N.A., as Trustee ("Owner"), and THOMPSON LAND AND ENGINEERING, INC. ("Thompson").

WHEREAS, Owner owns the following-described land situated in Section 36, Township 36 North, Range 1 East, W.M., Skagit County, State of Washington, to-wit:

That portion of the Southeast quarter of the Northeast quarter lying Southerly of Padilla Bay;
AND that portion of the Northeast quarter of the Southeast quarter lying Southerly of Padilla Bay;
AND the North half of the Southeast quarter of the Southeast quarter;
AND except county roads (the "Property").

WHEREAS, Thompson is the owner of the following-described property situate in Skagit County, State of Washington, to-wit:

Tract 25 and 26, "Plat of Orchard Beach Tracts" according to the plat recorded in Volume 4 of Plats, Page 45, records of Skagit County, Washington, except that portion thereof conveyed to Skagit County for road purposes by deed dated December 20, 1946 ad recorded January 20, 1947, under Auditor's File No. 400176.

TOGETHER WITH tidelands of the second class adjacent thereto.

ALSO that portion of vacated Sea View Drive, and that portion of Tract 26, "Plat of Orchard Beach Tracts," according to the plat recorded in Volume 4 of Plats, Page 45, records of Skagit County, Washington, described as follows:

Beginning at the most Southerly corner of Tract 25 of said Plat of Orchard Beach Tracts; thence South 52°36' West along the projection of the Southeasterly line of said Tract 25, 275.15 feet to the East line of the county road, thence North 1°25'30" East along the East line of said county road 438.89 feet to the

Southwesterly line of Tract 26; thence South 37°24' East along the Southwesterly line of said Tracts 25 and 26, to the point of beginning (the "Benefitted Property").

WHEREAS, Owner and Thompson have agreed upon the terms of an easement to be granted by Owner to Thompson for the purposes and upon the terms and conditions hereinafter set forth and are entering into this Agreement to set forth the same;

NOW, THEREFORE, the parties agree as follows:

1. Subject to the terms and conditions hereto, Owner hereby grants to Thompson an easement (the "Easement") for the purposes set forth in paragraph 2 below over the following described portion of the Property:

A strip of land being 10 feet on each side of a centerline described as follows:

Commencing at the Southeast corner of the North half of the Southeast quarter of the Southeast quarter of Section 36, Township 36 North, Range 1 East, W.M., Skagit County, Washington; thence North along East line of said Section a distance of 560.00 feet to the TRUE POINT OF BEGINNING of said centerline; thence due West 370.00 feet to the terminus of said strip of land (the "Easement Property").

2. The Easement granted hereby is for the purpose of installing a well at the westerly end of the Easement Property and installing a waterline in the approximate centerline of the Easement Property and maintenance of the same for the purpose of providing water to the Benefitted Property. Thompson agrees that the well and waterline shall be installed without removing any ~~trees~~^{TREES} unless Owner's written permission is first obtained. Thompson agrees to restore the Property to its present condition after installation of the well and waterline, although replanting of grass and small plants shall not be required.

3. The Easement is for the benefit of not more than six (6) lots situated within the Benefitted Property and may not be used for the benefit of any other property whatsoever. The Easement is granted for residential uses on the Benefitted Property only and use of water for commercial purposes would constitute a violation of the terms of this Agreement. Permissible water flow from any well may not exceed four (4) gpm.

4. This Easement shall be for a term of five (5) years and shall be automatically renewed for additional five-year terms so long as Thompson is not in default hereunder

beyond any applicable cure period or until the Easement terminates pursuant to the provisions of paragraph 5 below.

5. Thompson's use of water from the Easement well shall be subordinate to owner's reasonable use of water from its well for the Property and any subsequent development of the Property. In the event use of Thompson's well causes depletion of the aquifer(s) on the Property or salt water incursion into any well on the Property to the extent that reasonable use of water by owner (or subsequent owners) is adversely affected, Thompson shall immediately curtail use of his well or make such other arrangements as to restore reasonable use of water by owner.

6. This Easement shall automatically terminate at such time that there is any public water service which hereafter becomes available to serve the Benefitted Property. In the event such a public water service does become available, Thompson agrees to hook up to the same within a reasonable time period at which point this Easement shall cease and terminate.

7. Thompson agrees to indemnify and hold Owner harmless from and against any and all claims, demands, costs, expenses and liabilities in any way arising out of or relating to the Easement and the exercise of the rights granted to Thompson under this Agreement and including reasonable attorneys' fees incurred by Owner in defense of such claims, and excluding only claims resulting ^{from} ~~from~~ the sole negligence or intentional wrongful act of Owner. Owner agrees to notify Thompson of any such claim against Owner. Thompson agrees to obtain and keep in force throughout the entire term of this Agreement an extended form liability insurance policy with limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence with respect to personal injury and Five Hundred Thousand Dollars (\$500,000.00) with respect to property damage, to name Owner as an insured on such policy and to provide Owner with a certificate of such insurance including an endorsement providing that Owner shall receive not less than thirty (30) days notice of any cancellation or termination of such policy.

8. Thompson agrees to maintain the Easement Property in a manner compatible with the surrounding property. If requested to do so by Owner, Thompson agrees to place a fence around that portion of the Easement Property on which the well is situated including any portion within the radius described in the following paragraph.

9. Owner acknowledges that applicable health regulations require that within 100 feet of the well authorized by this Agreement the Property is not to be used for cesspools, sewers, privies, septic tanks, drainfields, manure piles, garbage of any kind or description, barns, chicken houses, rabbit hutches, piggens, or other enclosures or structures for the

keeping or maintenance of fowls or animals, or storage of liquid or dry chemicals, herbicides, or insecticides. Owner agrees not to intentionally permit any of the foregoing to occur, but in no event shall Owner be in violation of this Agreement unless Owner has received written notice from Thompson of any impermissible condition as stated above and Owner has not cured such condition within a reasonable period of time following such notice. Owner agrees to sign attached Declaration of Covenant required by the County Health Department.

10. Thompson's rights to use the Easement granted hereby is subject to Thompson's performance of the following conditions precedent, the performance of which is part of the consideration for Owner's grant of the Easement;

a. Payment of the sum of \$1,500.00 to Owner.

b. Drilling of an additional well on Owner's Property at an accessible location designated by Owner, at Thompson's expense with a sustainable flow of potable water of not less than 4 gpm. (Hookup of the well to any water line shall be the responsibility of Owner.)

11. Thompson agrees to obtain all necessary permits for the drilling and subsequent operation of both wells provided for in this Agreement, including any initial approval regarding potability of water produced from the well to be drilled for Owner.

12. Owner reserves the right, at their expense, in the future to relocate the Easement and any well and connecting water lines, well house and appurtenances then operating within the Easement to any other portion of the Property provided that a substitute easement area is designated and a new or replacement well is drilled to provide water at a flow rate as authorized for the original well. Relocation must be approved by Skagit County Health Department.

13. In the event of default by Thompson of any provision of this Agreement, not cured within thirty (30) days following written notice of default from Owner to Thompson or such additional period of time required to cure such default provided that a cure of the same is commenced within such period and is thereafter diligently pursued, Owner at their option, in addition to any other remedy of Owner hereunder or under applicable law, may terminate the Easement by giving written notice to Thompson. In the event of such termination, authorization to use the Easement Property shall immediately cease and Thompson shall immediately remove such items of property situated within the Easement Property as may be requested by Owner. Owner may, however, elect to retain all or any such items by designating the same in a written notice to Thompson following termination.

14. Any notices from one party to the other hereunder shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid to the following addresses or such other addresses as either party may hereafter designate by giving notice to the other party:

Owner: The Bank of California N.A.
Attn: H.W. Miller, Jr.
P.O. Box 3123
Seattle, WA 98114

PERSONAL DELIVERY TO:
The Bank of California,
N.A.
Suite 700, 910-4th Ave.
Seattle, Wa 98164
Attn: H.W. Miller, Jr.

Thompson: Jim Thompson, P.E.
375 Mt. Olympus Drive N.W.
Issaquah, WA 98027

Notices given as aforesaid shall be deemed given two (2) business days after mailing the same within the State of Washington or three (3) business days if mailed from any other point within the United States.

15. This Agreement is the entire agreement between the parties and may not be amended except by an instrument in writing signed by both parties. This Agreement shall be construed in accordance with the laws of the State of Washington. In the event of any dispute between the parties regarding the terms hereof, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees incurred in any litigation and appeals, from the other party.

16. This Agreement shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the land described herein or any part thereof, and shall inure to the benefit of each owner thereof.

17. Thompson intends to form a water company to operate the subject water system. The water company will consist of owners of the Benefitted Property. At the time when Thompson has sold all the Benefitted Property the administrator of the water company shall become the contact person for this Agreement upon Owner having been provided with notice of such change in accordance with the provisions of paragraphs 14 above.

18. It is understood and agreed by Thompson that Owner is executing this Easement in its fiduciary capacity only and Owner and Owner's officers, directors, employees and agents are not and shall not be liable hereunder, directly or indirectly, except for willful misconduct, under or by execution of this Easement Agreement. Any liability of Owner (including without limitation Owner's shareholders, affiliates, agents and employees) to Thompson or any other person shall be limited to the Estate of the Trust in the Property.

Thompson or any other person claiming through Thompson agrees to look solely to such interest in the Property for the recovery of any judgment against Owner, it being intended by the parties that neither Owner, its trustees or beneficiaries, nor any other assets of the Trust or of such trustees or beneficiaries shall be liable for any such judgment.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above set forth.

Owner:

Thompson:

The Bank of California, N.A.
as Trustee

James Thompson, President
Thompson Land and Engineering, Inc.

By:

Its:

H.W. MILLER, JR.
VICE PRESIDENT AND
TRUST REAL ESTATE MANAGER,
WASHINGTON DIVISION

By:

Its:

Richard P. Megenity
Assistant Vice President & Trust
Real Estate Officer

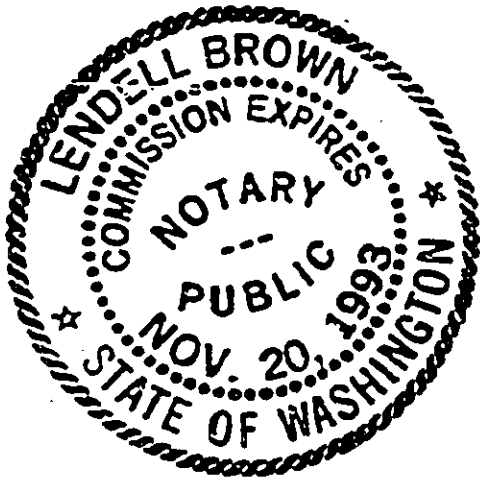
FOR CORPORATE ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF King) SS.

THIS IS TO CERTIFY that on this 23rd day of September, 1991, before me, the undersigned, a notary public in and for said State, duly commissioned and sworn, personally appeared H.W. Miller, Jr. + Richard P. Meenitz, to me known to be the Vice President + Assistant Vice President of The Bank of California N.A., the corporation that executed the within and foregoing instrument, and acknowledged the 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 said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

Lenell Brown
Notary public in and for the state of Washington, residing at Seattle
My appointment expires November 20, 1993



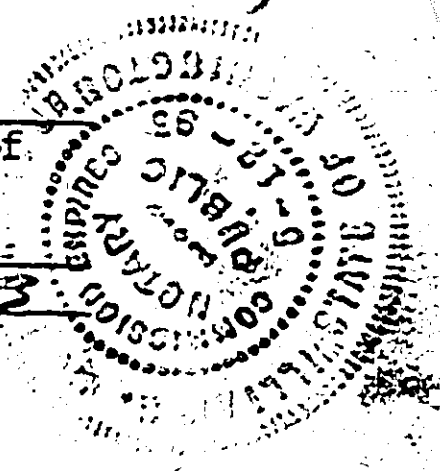
FOR CORPORATE ACKNOWLEDGMENT

STATE OF WASH)
COUNTY OF King) SS.

THIS IS TO CERTIFY that on this 2 day of Oct, 1991, before me, the undersigned, a notary public in and for said State, duly commissioned and sworn, personally appeared James Thompson, to me known to be the pres of Thompson L + E Inc., the corporation that executed the within and foregoing instrument, and acknowledged the 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 said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

[Signature]
Notary public in and for the state of Wash, residing at Seattle
My appointment expires May 93



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