

Doc # 2006161495  
Page 1 of 18  
Date: 05/10/2006 10:18A  
Filed by: ROBERT J THOMPSON  
Filed & Recorded in Official Records  
of SKAMANIA COUNTY  
J. MICHAEL GARVISON  
AUDITOR  
Fee: \$41.00

Return Address:

642 Belle ct, R2  
Washougal WA 98671

Document Title(s) or transactions contained herein: Declaration Re Garding water facilities easement and maintenance agreement	
GRANTOR(S) (Last name, first name, middle initial) Chera O Thompson Robert Jason Thompson	
<input type="checkbox"/> Additional names on page ____ of document.	
GRANTEE(S) (Last name, first name, middle initial) Skye Subdivision	
<input type="checkbox"/> Additional names on page ____ of document.	
LEGAL DESCRIPTION (Abbreviated: i.e., Lot, Block, Plat or Section, Township, Range, Quarter/Quarter) Lots 1-5 Skye SD	
<input checked="" type="checkbox"/> Complete legal on page 9 of document.	
REFERENCE NUMBER(S) of Documents assigned or released: 2006161314	
<input type="checkbox"/> Additional numbers on page ____ of document.	
ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER <del>02-05-31-4-0-0300-00 (Lot 1)</del> , 02-05-31-4-0-0301-00 (Lot 1) 02-05-31-4-0-0302-00 (Lot 2), 02-05-31-4-0-0303-00 (Lot 3) 02-05-31-4-0-0304-00 (Lot 4), 02-05-31-4-0-0305-00 (Lot 5)	
<input type="checkbox"/> Property Tax Parcel ID is not yet assigned <i>SR</i>	
<input type="checkbox"/> Additional parcel numbers on page ____ of document.	
The Auditor/Recorder will rely on the information provided on the form. The Staff will not read the document to verify the accuracy or completeness of the indexing information.	

**Filed for Record at Request of and  
After Recording Return to:**

Robert J. Thompson and  
Chera D. Thompson  
642 Bell Center Road  
Washougal, WA 98671

**DECLARATION REGARDING WATER FACILITIES EASEMENT AND  
MAINTENANCE AGREEMENT**

THIS DECLARATION REGARDING WATER FACILITIES EASEMENT AND MAINTENANCE AGREEMENT ("**Declaration**") is made this 10 day of May, 2006, by ROBERT J. THOMPSON and CHERA D. THOMPSON, husband and wife (collectively, the "**Declarant**"), for the purpose of burdening and benefiting the real property in Skamania County, Washington, described in Exhibit A, attached hereto and by reference incorporated herein (the "**Property**").

**RECITALS**

A. Declarant is the owner of the Property. Declarant subdivided the Property into five lots (each hereinafter a "**Lot**" and collectively, the "**Lots**"). The Lots are labeled as Lot 1, Lot 2, Lot 3, Lot 4 and Lot 5 on the Plat of Skye Subdivision recorded in the records of Skamania County, Washington, under Auditor File No. 2006161314 on April 25, 2006 (the "**Plat**").

B. Occupants and users of the Property gain access to the Property by way of a private street, portions of which are owned by the owners of the Lots (the "**Street**"). The Street is commonly known as Thompson Drive. The Plat created a non-exclusive easement for utilities located along the length of the Street, which easement is generally thirty (30) feet in width measured from the centerline of the Street, as shown on the Plat (the "**Utility Easement**").

C. Lot 4 has a fresh water well (the "**Well**") located on it. The Well will serve one single family residence on each of Lots 1 through 5. There will also be electrical lines and meters that provide and measure the electricity that runs the pump(s) and any pressure system and lighting for the Well and one or more waterlines will be installed in the Utility Easement to distribute the water from the Well to Lots 1, 2, 3 and 5. There is also or will also be a water line from the Well to provide water to the single-family residence on Lot 4. The Well, electrical lines, meters, pump(s), pressure system, lighting and water lines are sometimes hereinafter collectively referred to as the "**Water Facilities**".

D. This Declaration is for the purpose of confirming that the Utility Easement may be used for the construction, installation, maintenance, repair, inspection, reconstruction and replacement (collectively, "**Maintenance and Repair**") of the Water Facilities. The Water Facilities are to be common facilities among all five Lots and to be jointly maintained by the owners (each an "**Owner**" and collectively, the "**Owners**") of all five Lots. This Declaration is also for the purpose of obligating the Owners to share collectively in the Maintenance and Repair of the Water Facilities.

NOW, THEREFORE, based on the foregoing Recitals, Declarant declares as follows:

### DECLARATION

1. **Water Facilities Dedication.** Declarant hereby creates and dedicates the Water Facilities for the use and benefit of the Owners and their respective family members, lessees, mortgagees, invitees, guests, customers, agents, employees and other users (each Owner together with the listed persons sometimes hereinafter collectively, the "**Users**"). The Water Facilities shall be deemed to be a perpetual, nonexclusive easement covering the Well (and as much land surrounding the Well as is reasonably necessary for the Maintenance and Repair thereof) and the Utility Easement, and shall cover the Maintenance and Repair of the Water Facilities.

2. **Scope of Well Facilities.**

(a) No Owner shall place any buildings or other permanent structures over the Water Facilities (other than a pump house for the Well), prevent any other Owner's reasonable use thereof or otherwise take any action or fail to take any action that would unreasonably interfere with the other Owners' rights hereunder.

(b) There shall be no change in the manner in which real property taxes are paid on the land area underneath the Water Facilities. Those who are paying real property taxes on the land area underneath the Water Facilities shall continue to do so and such obligation shall continue with each Owner's successors and assigns. The Owner of Lot 4 may, if he, she or it so elects, ask Skamania County to separately assess the land and improvements comprising the Well and if so separately assessed, then the real property taxes thereon shall be deemed to be common expenses of the Owners.

(c) The Water Facilities shall not be used in any manner that results in a violation of any covenants, conditions, restrictions or laws affecting the Property.

(d) The use of the Water Facilities shall be on a nonexclusive, nonpriority basis. No User's rights hereunder shall lapse in the event of that User's failure to use the Water Facilities on a continuous basis except as provided in subparagraph (g) below.

(e) Each Owner may use water from the Well to serve a single-family residence on his, her or its Lot and for household gardening purposes. No water may be drawn for pasture or general irrigation or any commercial use.

(f) None of the Owners shall be held responsible as to the amount, quality, and/or potability of the water taken from the Well in the absence of negligence or intentional wrongdoing, but the Owners shall only be responsible for their pro rata share to correct such deficiencies.

(g) Each Owner reserves the right to disconnect from the Water Facilities at any time. If an Owner disconnects from the Water Facilities, his, her or its rights to the Water Facilities shall terminate but all other rights to use the Utility Easement shall continue.

### **3. Initial Construction of Well and Installation of Utility Lines within Water Facilities.**

(a) Declarant constructed the Well. The Owner of Lots 1, 2, 3 and 5 may install water lines in the Utility Easement and connect those lines to the Well. All such work shall be performed in a good and workmanlike manner and consistent with usage for one single-family residence per Lot. The water lines shall be designed and built to the standards of the State of Washington, Skamania County and all other applicable laws, statutes, codes, ordinances, regulations and orders. Seven (7) days prior written notice shall be given to the Owner of Lot 4 before undertaking such construction activities and the land shall be restored to as close to the same condition as reasonably possible after completion of that work. The Owner of Lots 1, 2, 3 and 5 may repair, replace and otherwise maintain those lines from time to time as needed. Each Owner shall provide proof of liability insurance (not less than \$250,000) before working on another Owner's Lot. If work will be done on an Owner's Lot, that Owner may also require the Owner doing the work to add the Owner of the Lot as an additional insured on the insurance policy of the Owner doing the work.

(b) Even though Declarant constructed the Well and granted the Utility Easement, Declarant disclaims the making of any representations or warranties, express or implied, regarding the Water Facilities or matters affecting the Property, including, without limitation, the physical condition of the Water Facilities, soil condition, whether the water is potable, the capacity of the Well, compliance with building, health, safety, land use and zoning laws, statutes, codes, ordinances, regulations and orders, structural and other engineering characteristics, and all other information pertaining to the Property. Each purchase of a Lot moreover acknowledges (i) that Declarant did not design the Water Facilities, (ii) that he, she or it is a sophisticated purchaser, knowledgeable and experienced in the risks attendant to an investment in rural property and capable of evaluating the merits and risks of purchasing land utilizing this type of water supply, (iii) that he, she or it purchased his, her or its Lot after making and relying upon his, her or its own (or his, her or its experts') investigation of the physical, environmental, economic and legal condition of the Water Facilities, including, without limitation, the compliance of the Water Facilities with laws and governmental regulations, and (iv) that he, she or it is not relying upon any representations and warranties made by Declarant or anyone acting or claiming to act on Declarant's behalf concerning the Water Facilities. Except as to the extent set forth in any separate purchase contract, each purchasing Owner shall be deemed to have purchased his, her or its rights in the Water Facilities in "AS IS" condition and assumes the risk that adverse physical, environmental, economic, or other legal conditions may not have been revealed by his, her or its investigations.

#### 4. Maintenance.

(a) The Owners shall be jointly and severally responsible for the proper upgrading, Maintenance and Repair of the Water Facilities. Provided, however, the Owners of Lots 1, 2, 3 and 5 shall each be responsible for the Maintenance and Repair of the water service line that serves their four Lots and runs within the Utility Easement. Each shall bear one-fourth of that cost unless a water line was damaged by a particular Owner or a User of a particular Owner's Lot (such as cutting the line by using a ditching machine – in which case that Owner shall be solely responsible to correct such damage). If the water lines serving Lot 4 break, then the Owner of Lot 4 shall repair them at his, her or its sole cost.

(b) Five water meters shall be installed on the lines that provide water to each Lot from the Well to measure water usage. The Owners shall be responsible for the cost for the proper upgrading, Maintenance and Repair of the Water Facilities in proportion to the water usage based on the readings from the water meters except as otherwise provided below. Unless and until those meters are installed, then such costs shall be shared equally among the Owners (i.e., 1/5<sup>th</sup> each). This costs include the electricity costs to run the Well pumps and pressure systems and any ancillary lighting.

(c) All upgrading, Maintenance and Repairs shall be performed on a prompt, diligent and regular basis in accordance with generally accepted utility standards then existing under the laws of Skamania County, Washington, including, but not limited to, the prompt repairing of leaks and broken utility lines.

(d) If the Well does not provide an adequate supply of water, if a water line breaks thereby reducing the water pressure, or if there is a similar occurrence that disrupts the water supply, then this shall be deemed to be a "Water Emergency."

(e) Each water line from the Well shall have a separate shut-off valve. If one line breaks thereby creating a Water Emergency, then any affected Owner may, without any liability, shut that valve to restore water pressure until that line is repaired.

(f) If an Owner believes that upgrading, maintenance or repair of the Water Facilities (exclusive of the water service lines as provided in subparagraph [a] above) is necessary, that Owner shall provide written notice of the need for repair (a "Repair Notice") to the Owners of the other Lots. The Repair Notice shall be sent by certified mail, return receipt requested, to the Owners of the other Lots at the addresses set forth below. The Repair Notice shall specifically describe the type of repair required and include a bid from a reputable contractor to perform the repair work. The other Owners shall have ten (10) days after the date of the Repair Notice in which to object to the scope, nature or cost of the repair. The objecting Owner(s) must send the notice of objection ("Notice of Objection") to the Owner sending the Repair Notice within ten (10) days following the date of the Repair Notice. If a Notice of Objection is not sent within that 10-day period, then the Owner sending the Repair Notice may proceed with the repairs, provided that the cost does not exceed the amount set forth in the Repair Notice. If a Notice of Objection is timely sent, then the parties shall attempt, for a period of thirty (30) days, to negotiate in good faith to resolve any disagreements regarding the repairs. If the Owners are unable to resolve the dispute within that thirty- (30-) day period, then any



Owner may submit the dispute to binding arbitration in accordance with rules of the American Arbitration Association (or any successor entity), and the prevailing party in such proceeding shall be entitled to recover its reasonable attorney fees and costs for the non-prevailing party. The foregoing notwithstanding, in the event of a Water Emergency, an Owner desiring to make a repair shall attempt to give notice to the other Owners (which may be oral if reasonable under the circumstances), and may then take prompt action to restore water service. All costs incurred to restore water service shall be presumed to be reasonable. No Owner may charge for his, her or its own time in making repairs.

(g) The Owner providing a Repair Notice may commence the repairs following approval of the same by the other Owners (whether a deemed approval as a result of a failure to issue a timely Notice of Objection or pursuant to a subsequent negotiated resolution of the dispute or an arbitrator's award) – except in the case of a Water Emergency, in which case the repair may proceed as outlined in subparagraph (f) above. After the repair work is complete, the Owner initiating the repair shall send a billing to the other Owners and the other Owners shall make payment within ten (10) days. Any Owner receiving any electricity bill for the Water Facilities or any other billing contemplated hereunder shall also send a billing to the other Owners and the other Owners shall make payment within ten (10) days. If payment is not made within that 10-day period, then interest shall accrue for the benefit of the Owner initiating the repairs at the rate of twelve percent (12%) per annum. If the billing is not paid, the Owner initiating the repair shall also be entitled to commence legal action to collect the amounts due, and in that action collect reasonable attorneys fees and costs as may be awarded by the court.

(h) Each Owner agrees, upon the request of any other Owner, to provide an estoppel letter to any prospective mortgagee or purchaser of an Owner so that such mortgagee or purchaser will be aware of any unpaid maintenance or repair expenses by that particular Owner, as provided in subparagraph 9(b) below.

(i) If four of the five Owners so agree, then a bank account shall be established to cover the anticipated costs hereunder. Each Owner shall deposit \$200 into that account at the time the account is established to cover the anticipated costs for the year. Money may be withdrawn from the account for that purpose. A separate ledger account shall be kept with respect to each Owner. If the balance of the account drops below \$200, then the Owners shall make deposits to restore the account. Each Owner shall be responsible for one-fifth (1/5<sup>th</sup>) of the account costs. If an Owner disconnects from the Water Facilities, then he, she or it shall receive a refund of any money in the account except amounts necessary to pay costs accrued as of the date of disconnection.

5. **Indemnity and Liability Insurance.** Each Owner shall indemnify and hold harmless the other Owners from and against any and all claims arising from or in connection with use of or damage to the Water Facilities by that Owner and his, her or its successors, assigns, family members, lessees, mortgagees, invitees, guests, customers, agents and employees, together with all costs, expenses and liabilities incurred in connection with each such claim or action or proceeding brought thereon, including, without limitation, all attorney fees and expenses. In addition, each Owner will indemnify, defend and hold the other Owners harmless from any loss, liability, expense or claim that (a) arises out of or in connection with an Owner's failure to perform or comply with the terms of this Declaration, (b) any lien or claim that asserts

priority over the interest of the other Owners' easement rights under this Declaration, or (c) arises out of or in connection with the performance of any construction activities performed by or under the direction of the indemnifying Owner. In case any action or proceeding is brought against an Owner and such claim is a claim from which another Owner is obligated to indemnify an Owner pursuant to this Section 5, the Owner, upon notice from the Owner subject to the claim, shall resist and defend such action or proceeding (by counsel reasonably satisfactory to the Owner subject to the claim).

6. **Breach of Obligation.** No Owner shall be considered in default under this Declaration for a failure to perform his, her or its obligations under this Declaration unless such failure continues more than fifteen (15) days after written notice to the Owner of such failure. To the extent the failure is of the type that cannot be cured within the fifteen (15) days, the Owner shall not be considered in default if the failure is not cured within fifteen (15) days after such notice provided that the Owner commences to cure such failure within such period and diligently and continuously completes the cure of such failure within a reasonable period of time. If any Owner shall be in default of such Owner's obligations under this Declaration, the other Owners shall be entitled to require performance of the obligations by suit for specific performance or, where appropriate, through injunctive relief. Such remedy shall be in addition to any other remedies afforded under Washington law and those rights of cure and reimbursement specifically granted under this Declaration. The foregoing notwithstanding, an Owner's failure to comply with the terms of this Declaration shall be deemed an immediate default if it results in a Water Emergency.

7. **Covenant Running with the Land.** The Owners hereby agree that this Declaration, and all covenants contained herein, touch and concern the land, run with the land and bind and benefit the affected Lots, including any division or partition thereof. The Owners agree that this Declaration and the covenants herein shall be binding upon their transferees, successors, heirs, representatives and assigns. If and when an Owner sells his, her or its Lot, the personal liability of that transferring Owner shall terminate as to any liabilities or obligations that accrue thereafter and the transferee shall thereafter be deemed to have assumed such personal liability.

8. **Attorney Fees.** If legal action is commenced in connection with this Declaration, the prevailing Owner in such action shall be entitled to recover his, her or its reasonable attorney fees and costs incurred in the trial court and any appeal therefrom. The term "action" shall be deemed to include arbitration and any action commenced in the Bankruptcy Courts of the United States and any other court of general or limited jurisdiction. The reference to "costs" includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), out-of-pocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

9. **General Provisions.**

(a) **Waiver.** Failure at any time to require performance of any provision of this Declaration shall not limit an Owner's right to enforce the provision. Any waiver of any breach of any provision shall not be a waiver of any succeeding breach or a waiver of any provision of this Declaration.

(b) **Status Certificate, Information.** Within twenty (20) days after receipt of a written request, an Owner shall promptly deliver a written status certificate to the other Owner(s) stating (a) whether this Declaration is unmodified and in full force and effect and (b) whether (to the best of the Owner's knowledge) the other Owner is in compliance with his, her or its obligations hereunder and any other matters that may be reasonably requested.

(c) **Status of Title.** This Declaration is granted subject to all prior easements of record.

(d) **Amendments.** Except as otherwise set forth herein, this Declaration may not be modified, amended, or terminated except by the written agreement of the Owners of each Lot.

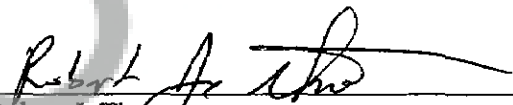

(e) **Governing Law.** This Declaration will be governed and construed in accordance with the laws of the State of Washington.

(f) **No Merger.** The rights granted herein shall not be deemed merged by reason of the common ownership of the Lots by Declarant. Notwithstanding such common ownership, this Declaration and the rights granted herein shall survive and continue in full force and effect for the benefit of the Owners of the Lots and their respective successors and assigns.

(g) **Severability.** If any portion of this Declaration shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

(h) **Notices.** All notices given pursuant to this Declaration shall be addressed to the Owner of each Lot at the property address of that Lot, if the Owner's personal residence is that Lot. If an Owner does not maintain his or her personal residence at the Lot, then notices shall be sent to such address as that nonresident Owner may from time to time provide in writing. If no notice address is so provided, then notice shall be given to the Owner at the address maintained by the tax assessor for Skamania County, Washington.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date set forth above.

  
\_\_\_\_\_  
Robert J. Thompson  
  
\_\_\_\_\_  
Chera D. Thompson

(Acknowledgment on following page.)



STATE OF WASHINGTON )

County of Clark ss.  
Skamania )

I certify that I know or have satisfactory evidence that Robert J. Thompson is the person who appeared before me and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: May 10, 2006.

NOTARY PUBLIC  
JESSICA L. SOULE  
STATE OF WASHINGTON  
My Commission Expires Dec. 15, 2009

Jessica L. Soule  
Notary Printed Name: Jessica L. Soule  
Notary Public in and for the State of Washington  
residing at Washongah, therein.  
My commission expires: 12/5/09

STATE OF WASHINGTON )

County of Clark ss.  
Skamania )

I certify that I know or have satisfactory evidence that Chera D. Thompson is the person who appeared before me and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: May 10, 2006.

NOTARY PUBLIC  
JESSICA L. SOULE  
STATE OF WASHINGTON  
My Commission Expires Dec. 15, 2009

Jessica L. Soule  
Notary Printed Name: Jessica L. Soule  
Notary Public in and for the State of Washington  
residing at Washongah, therein.  
My commission expires: 12/5/09

**EXHIBIT A**

**(Legal Description)**

Lots 1 through 5 inclusive of Skye Subdivision, according to the recorded plat, recorded in Auditor File No. 2006161314, in the County of Skamania, State of Washington.

Unofficial  
Copy