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Kathy Hill, Skagit County Auditor

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Document Title: Third Party Beneficiary Contract Agreement

First Party: Willard M. and Ida M. Hendrickson

Representative: Hayes Drilling, Inc.

FIRST AMERICAN TITLE CO.

Abbreviated Legal Description:

B61106 E-3

LOT 4 IDA ESTATES

Assessor's Property Tax Parcel/Account Numbers: 4577-000-004-0004

### THIRD PARTY BENEFICIARY CONTRACT AGREEMENT

THIS AGREEMENT, made this 5<sup>th</sup> day of ~~March~~<sup>May</sup>, 2000, by and between WILLARD M. HENDRICKSON and IDA M. HENDRICKSON, husband and wife, First Party (hereinafter called "First Party") and HAYES DRILLING, INC., a corporation only, chartered, organized, and existing under the Law of the State of Washington (hereinafter called "Representative").

#### WITNESSETH:

WHEREAS, the First Party is now the owner of property in Skagit County, State of Washington, described in Schedule A attached hereto, upon which there is located the First Party's water supply system; and

WHEREAS, the First Party warrants that all the property described in Schedule A, as well as the water supply system owned by First Party shall be made subject to the Agreement by recordation of appropriate covenants, reservations, restrictions, or conditions in such manner as is required by Washington law to put all person on notice that such properties have been subjected to the terms of this Agreement; and

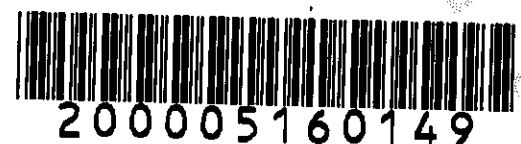
WHEREAS, First Party hereby warrants that existing and future encumbrances, liens or other indebtedness, if any, to the title of the water supply system now owned or hereafter acquired by First Party shall be subordinated and made subject to this Agreement; and

WHEREAS, First Party intends to operate and maintain an existing water supply system for the purpose of supplying water service to buildings, residences and other improvements located within the Ida Estates Subdivision described by that certain recording under Skagit County Auditor's File No. 9203120017 and for that purpose has or will construct, lay, and maintain water storage and distribution facilities, water and sewage mains, lateral lines, manholes, pumping stations, and all other facilities and appurtenances necessary to maintain an adequate water supply for domestic consumption for the occupants of such buildings, residences, and other improvements in said subdivision; and

WHEREAS, it is contemplated that the building, residences and other improvements to be served by said water supply system of the First Party will be located on properties in said areas or subdivisions which will be security for mortgages given to various lenders, which mortgages may be insured under the National Housing Act and/or guaranteed under the Servicemen's Readjustment Act of 1944, as amended; and

WHEREAS, one of the inducing factors to the granting of mortgage loans on properties, buildings, residences, and other improvements in the areas to be served by the water supply system of the First Party by various lenders and the insuring thereof under the National Housing Act and/or Servicemen's Readjustment Act of 1944, as amended, is that there will be continuous operation and maintenance of the water supply system according to the approved standards set forth in this Agreement, and that rate charges by the First Party for its services will be reasonable, and the First Party is desirous of assuring that its rates will be reasonable, and also assuring the continuance of the operation and maintenance of said water supply system, for the benefit of the present and future owners of properties, buildings, residences, and other improvements, and mortgagees holding mortgages covering such buildings, residences and other improvements.

NOW, THEREFORE, for and in consideration of the reliance upon this Agreement by the Representative and by present and future owners of buildings, residences, and other improvements to be served by the water supply system of the First Party, and by mortgagees (who will make and hold mortgage loans on such buildings, residences, and other



improvements) and by HUD/FHA and Veterans Administration in insuring or guaranteeing respectively such loans, the First Party and the Representative do hereby covenant and agree as follows:

#### SECTION 1.

(a) This Agreement is made not only with the Representative in its individual capacity but also as the representative of and for the benefit of the present and future owners or occupants of all and each of the properties, buildings, residences, and other improvements which are now or may hereafter be served by the water supply system of the First Party as well as the holders of any mortgage or mortgages covering any of such buildings, residences, and other properties or improvements.

(b) Any person, firm, association, governmental agency, or corporation (1) served by the water supply system of the First Party, or (2) holding any mortgage on any property connected to the said system, is hereby granted the right and privilege, and is hereby authorized, in its own name and on its own behalf or on behalf of others for whose benefit this Agreement is made, to institute and prosecute any suit at law or in equity in any court having jurisdiction of the subject matter, to interpret and enforce this Agreement or any of its terms and provisions, including, but not limited to, suits for specific performance, mandamus, receivership and injunction.

#### SECTION 2. The First Party covenants and agrees:

(a) The First Party shall supply at all times and under adequate pressure for the use of each of the properties duly connected to its water supply system a sufficient quantity of water to meet the reasonable needs of each of the properties duly connected to said water supply systems. Such water shall be of the quality and purity as shall meet the 1974 Safe Drinking Water Act of the U. S. Environmental Protection Agency (EPA), so as to produce water without excessive hardness, corrosive properties, or other objectionable characteristics making it unsafe or unsuitable for domestic and ground use or harmful to any or all pipes within and/or without the buildings, residences, and other improvements. Records of any and all tests conducted with said water supply systems shall be kept as permanent records by the First Party and said records shall be open to inspection by the State Board of Health of the State of Washington and the owners of the properties in the subdivisions. The said Board of Health and/or its agents shall at all times have access to the water supply system of the First Party to conduct any and all tests as said Board shall determine necessary to ascertain compliance with the said Standards and characteristics. **In any event, the First Party shall have said Board make such analyses at least quarterly and the First Party shall pay all costs and expenses in connection therewith. In the event said Board shall determine that the purity of the water does not meet the aforesaid Standards, the First Party shall immediately at its sole**



**cost and expense make any adjustment, repair, installation, or improvement to its facilities that shall be necessary or required or recommended by said Board to bring the purity of the water up to the said Standards.<sup>1</sup>**

SECTION 3. The First Party agrees to maintain said water supply system at all times in good order and repair so that satisfactory water service as provided in the foregoing paragraphs may be supplied to each of said buildings, residences, and other improvements in said areas or subdivisions in the quantity and in the quality provided in the foregoing paragraph. The water supply system shall be open for inspection at all times by the agents of the Washington State Board of Health.

SECTION 4. The First Party reserves and has the right to establish and collect as a charge or charges for water furnished and consumed by the owners or occupants of each of the buildings, residences, and other improvements the initial rates described in Schedule "B" attached hereto and made a part hereof. The First Party shall have the right to install on the premises of each of the individual buildings, residences, and other improvements a water meter to be maintained by the First Party through which all water supplied to the consumer shall pass and to which the First Party shall have access at reasonable times for the purpose of taking meter readings and keeping said meters in repair. In the event said meters shall be installed and the consumer shall have used in excess of \_\_\_\_\_ thousand (\_\_\_\_\_) gallons per month, the First Party may charge for an such excess at the rate or rates set forth in the attached Schedule "B".

SECTION 5. In the event the First Party should fail to operate and maintain the water supply system in the manner and under the conditions specified herein (failure due to Acts of God, natural disasters or other causes beyond the control of the First Party, including labor troubles or strikes, excepted) or in the event the First Party collects or attempts to collect from the consumers of water charges in excess of the rate or rates specified or provided for in this Agreement, then in either of such contingencies, if such default shall continue for a period of thirty (30) days (or for a period of two (2) days in the event such default considers of a shutdown of the water system or suspension of water services, except for the causes above set forth) after written notice to the First Party by any consumer, mortgagee, or by any person for

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However, nothing contained in this Agreement (whether in this paragraph or in other paragraphs set forth herein) shall require the First Party to make any capital improvements to the subject system that may hereafter be required unless either (1) the First Party is otherwise required to do so as a result of existing covenant recorded under Skagit County Auditor's File No. \_\_\_\_\_; or (2) unless an agreement satisfactory to the First Party and the owners for reimbursement of the costs of the requirement capital improvements is agreed to.



whose benefit this contract is made, then and in such event, any such person for whose benefit this contract is made, may enforce this Agreement by action, instituted for such purposes in any court of competent jurisdiction and in such action shall be entitled as a matter of right to the entry of an order appointing a receiver or other officer appointed by the Court to take immediate possession of the water supply system of the First Party for the purpose of operating and maintaining the same with the full right to hold, use, operate, manage and control the same for the benefit of the parties for whom this Agreement is made, with full right to collect the charges for services at rates not in excess of those specified or provided for in this Agreement. Such receiver or other officer of the Court, during the period of its operation, shall be entitled to such reasonable compensation and expenses, including reasonable attorneys' fees, as may be determined by the Court.

SECTION 6. The First Party may establish, amend or revise from time to time and enforce Rules and Regulations for Water Service covering the furnishing of water supply service within said areas or subdivisions, provided, however, all such rules and regulations established by the First Party from time to time shall at all times be reasonable and subject to such regulations as may now or hereafter be provided by law; and provided further that no such rule or regulation so established, amended or revised can be inconsistent with the requirements of this Agreement nor shall the same abrogate any provision hereof. Any such rules and regulations established, amended, revised and enforced by the First Party from time to time shall be binding upon any owner or occupant of any of the property located within the boundaries of such areas or subdivisions, the owner or occupant of any building, residence or other improvement constructed or located upon such property and the user or consumer of any water supply service.

SECTION 7. Changes in the initial rates described in Section 4 hereof may be proposed by the First Party and by third party beneficiaries of this Agreement in the following manner:

If within ninety (90) days after notice to the Representative and to all parties connected to the water supply system of a rate change proposed by the First Party, not more than one-third of such parties have signified in writing their opposition to such proposed rate change, the First Party may forthwith establish such new rates. If more than one-third of such parties signify, in writing, their opposition to a rate change proposed by the First Party, or if more than one-third of such parties proposed in writing a rate change which the First Party opposes, and the parties cannot negotiate an agreement within ninety (90) days to the reasonableness of the new rates, then the matter of the reasonableness of such new rates shall be referred to a board of arbiters selected as follows: the First Party shall designate one arbiter, the objecting parties shall designate one arbiter, and the two arbiters thus selected shall choose a third arbiter. The three arbiters shall make their written recommendations to the parties to the

dispute as to the reasonableness of the new rates within ninety (90) days after the reference of the dispute to them. Written notice of the hearing of the dispute by the arbiters shall be given to the First Party and to all objecting parties. All proceedings before the arbiters shall be recorded in writing. Either side to the arbitration may present written objections to the recommendations within thirty (30) days after the decision. If no written objections are made, it shall be considered that all parties have agreed that the new rates recommended by the arbiters are reasonable. If written objections are filed by either side, the question of the reasonableness of the new rates shall be the subject of review by a court of competent jurisdiction in appropriate legal proceedings initiated for such purpose. If the event of arbitration or court proceedings the proposed change of rates shall be held in abeyance and shall not become effective until the conclusion of such proceedings.

SECTION 8. Notwithstanding any provision of this Agreement, no third party beneficiary shall have or claim to have any right, title, lien, encumbrance, interest or claim of any kind or character whatsoever in and to the First Party's water supply system, or properties and facilities, and the First Party may mortgage, pledge or otherwise encumber, or sell or otherwise dispose of, any or all of such water supply system, properties, and facilities without the consent of such third parties. The words "properties and facilities" as used in this Section shall not only include physical properties and facilities but all real, personal and other property of every kind and character owned by the First Party and used, useful, or held for use in connection with its water supply system, including revenues and income from the users of water services, cash in bank and otherwise, provided, however, that this Agreement as set forth herein shall be binding upon all successors and assigns of the First Party.

SECTION 9. All notices provided for herein shall be in writing or by telegram, and if to the First Party, shall be mailed or delivered to the First Party at \_\_\_\_\_, and if to parties for whose benefit this contract is made shall be mailed or delivered to their last known business or residential addresses.

#### SECTION 10.

(a) The covenants, reservations, restrictions or conditions herein set forth are and shall be deemed to be covenants, reservations, restrictions or conditions imposed and running with the land and properties within Ida Estates as described by that certain recording under Skagit County Auditor's File No. 9203120017 and shall be binding upon and shall inure to the benefit of the First Party, its successors and assigns, and other owners within Ida Estates and shall likewise be binding upon and shall inure to the benefit of all parties who, in any manner whatsoever, shall acquire title to the First Party's water supply system and properties and facilities as defined in Section 8 hereof. To this end, the First Party shall make the water supply system now owned or hereafter acquired subject to this Agreement by recordation or





appropriate covenants, reservations, restrictions, or conditions in such manner as is required by law to put all person on notice that such water supply system has been subjected to the terms of this Agreement are deemed to be covenants, reservations, restrictions, conditions imposed upon and running with the land and properties now owned or hereafter acquired by the First Party. (This Agreement shall supplement the Restrictive and Protective Covenants Running With the Land as recorded under Skagit County Auditor's File No. 911205006.)<sup>2</sup>

(b) This Agreement shall also be binding upon and shall inure to the benefit of the Representative, its successors and assigns, and as set forth in Section 1 hereof, all present and future owners or occupants of all and each of the properties, buildings, residences, and other improvements which are now or may hereafter be served by the water supply systems and/or sewage systems of the First Party as well as the holders of any mortgage or mortgages covering any such properties, buildings, residences and other improvements, as well as the successors and assigns of all such present and future owners and occupants and holders of mortgages.

SECTION 11. This Agreement shall be governed by the laws of the State of Washington.

SECTION 12. This Agreement shall remain in full force and effect and for the benefit of all parties mentioned herein until either (a) the water supply system described herein is taken over by governmental authority for maintenance and operation; or (b) other adequate water supply service is provided by a governmental authority through means other than the water supply system owned by the First Party; or (c) the rates, services and operation of the First Party are placed by law under the jurisdiction of a regulatory commission or other governmental agency or body empowered to fix rates and to which a consumer of the First Party may seek relief. Upon the happening of any of the aforesaid events, this Agreement shall automatically terminate; and, at the request of the First Party, the First Party and the Representative shall execute an instrument canceling this Agreement.

IN WITNESS WHEREOF, the First Party and the Representative have caused this Agreement to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.



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Nothing contained in this Agreement shall require the Representative to make capital improvements to the subject system that may hereafter be required unless an agreement satisfactory to the owners and the Representative for reimbursement of the costs of the required capital improvements is agreed to or unless existing covenants binding on the owners establishes the obligations of the owners.

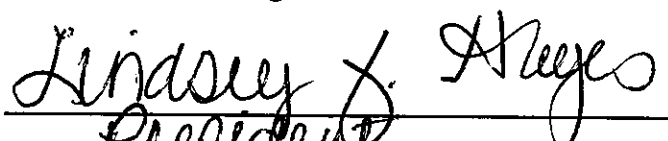


FIRST PARTY:

  
Willard M. Hendrickson  
  
Ida M. Hendrickson

REPRESENTATIVE:

Hayes Drilling, Inc.

By:   
Its: President

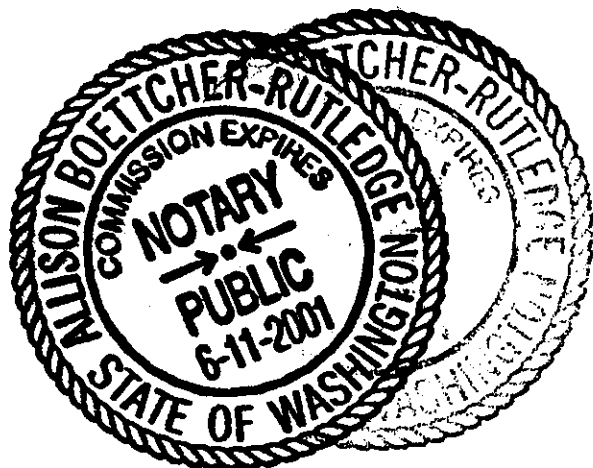
STATE OF WASHINGTON )


: ss.

COUNTY OF SKAGIT )

On this day personally appeared before me Willard M. Hendrickson and Ida M. Hendrickson, 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.

WITNESS my hand and seal this 5 day of May, 2000.



  
Printed Name: Allison Boettcher-Rutledge  
NOTARY PUBLIC in and for the  
State of Washington  
My Appointment Expires: 11 June 2001

STATE OF WASHINGTON )

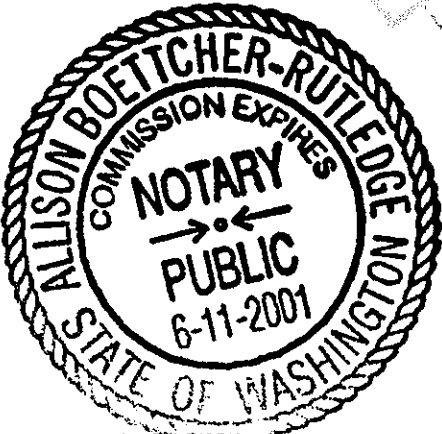
: ss.



COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that Lindsey J. Hayes is the person who appeared before me, and said person acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged it as the President of Hayes Drilling, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 5 May, 2000.



Allison Boettcher-Rutledge  
Printed Name: Allison Boettcher-Rutledge  
Notary Public in and for the  
State of Washington  
My Commission Expires: 11 June 2001

ACCEPTED & APPROVED:

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\_\_\_\_\_  
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## SCHEDULE "A"

### Description of Property

Southeast 1/4 of the Southeast 1/4 of Section 10, Township 35 North, Range 4 East, W.M.; thence South 88 degrees 52'08" East 30.00 feet to the Southwest corner of Lot 7 of the Plat of Ida Estates; thence North 01 degrees 17'05" East 185 feet; thence South 88 degrees 52'08" East 100 feet to the center point of 100 foot radius easement for well site pollution control.



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SCHEDULE "B"

Initial Water Rates to be Charged



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**SCHEDULE "C"**

**Initial Rates for Sewer Services to be Charged**



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