

SUPPLEMENTAL EASEMENT AGREEMENT

This agreement made and entered into this 5 day of February, 1990 by and between MERCER CONSTRUCTION AND DEVELOPMENT, INC. ("MERCER CONSTRUCTION") and ROBERT GOTTLIEB and LORRI GOTTLIEB ("GOTTLIEB") is made with reference to the following facts:

A. Mercer Construction is the owner of certain real property located in King County, Washington, more particularly described in Exhibit A attached hereto and incorporated by reference ("Lot 1") ("Lot 2").

B. Mercer Construction has caused to be prepared and recorded an Easement Agreement dated December 21, 1989 recorded under Auditor's file no. 9001190700, re-recorded under Auditor's file no. 9001221011, which contains certain covenants which affect Lot 1 and Lot 2 ("Easement Agreement").

C. Mercer Construction has entered into a contract to sell Lot 1 to Gottlieb ("Sale Agreement"). In connection with such sale and purchase, Mercer Construction and Gottlieb have agreed to modify certain provisions of the Easement Agreement and provide for the recording of this Supplemental Easement Agreement prior to the conveyance by Mercer Construction of the fee ownership of Lot 1 to Gottlieb, which is anticipated to be on or about February 5, 1990.

D. Mercer Construction represents that the private road tract that serves Lot 1 and Lot 2, as graded, is in some locations outside the area described and depicted on Mercer Island Boundary Revision No. MI-89-11-25(J-4) and recorded under recording no. 9001199015. Mercer Construction will pave, or cause to be paved, the private road tract in the actual location where the road has been graded. Mercer Construction represents that the private road as paved, will not encroach upon the boundaries of Lot 1 in any substantial manner.

In light of the foregoing, Mercer Construction and Gottlieb agree that the following modifications shall be made to the Easement Agreement:

1. Walkway Construction. Mercer Construction agrees to construct the pedestrian walkway referred to on the face of the plat within the northerly 9 feet of Lot 2 and within the 1 foot wide portion of Lot 1, which lies immediately north of and adjacent to Lot 2.

9002-00 90440 D  
REC'D F 9.00  
REC'D FEE 2.00  
CASHED 11.00

RECEIVED THIS DAY

FEB 6 10 44 AM '90

Filed by Chicago Title Insurance Co.

9002060440

Ref. # 176928-S

2. Dock Construction. Mercer Construction agrees to construct and complete the dock in front of Lot 2 substantially in accordance with the plans as approved by the City of Mercer Island, which are described as to size and configuration on Exhibit B attached hereto, subject to such modification as may be required by the City of Mercer Island and/or the Department of Ecology pursuant to the dock approval process.

3. Use of Dock Modification. Paragraph 3 of the Easement Agreement shall be amended as follows: The following sentence contained in paragraph 3 of the Easement Agreement shall be deleted

"Further, Lot 1 owner shall not have any right to use the dock or moorage area after dark. In addition, no parties or gatherings of more than four (4) persons at any one time shall be permitted on or around the dock or moorage area by the owner of Lot 1 without the prior permission of the owner of Lot 2".

In its place, the following language shall be substituted:

"The number of persons permitted on the dock for parties or gatherings of guests, tenants, invitees, and family members of Lot 1 shall be reasonable in number. Such activities shall be conducted in such manner so as to ensure that the use thereof and noise generated thereby, does not unreasonably disturb the owner of Lot 2 or the adjacent property owner to the north, particularly during the hours from dusk to dawn.

The following subparagraphs shall be added to paragraph 3 of the Easement Agreement:

"From and after the initial designation by the owner of Lot 2 of the moorage slip to be used exclusively by the owner of Lot 1, such designation shall not be changed without the mutual consent of the owners of Lot 1 and Lot 2. Any changes, modification, alterations or expansions of the dock shall be by mutual consent of the owner of Lot 1 and Lot 2. Any change, modification alteration or expansion of the dock shall be paid for by the owner of the Lot which benefits from such activity."

In addition, the owners of Lot 1 and Lot 2 agree that any expansion of the dock shall require the consent of the owner of the adjacent waterfront owner to the north, which consent shall not be unreasonably withheld.

9002060440

4. Indemnification. The following portion of paragraph no. 6 of the Easement Agreement shall be deleted:

"(1). The performance by the owner of Lot 2 of the duties set forth in paragraph 4 hereof; . . ."

and substituted with the following:

"(1). The performance by the owner of Lot 1 or Lot 2 (such as the circumstances may dictate) of the duties set forth in paragraph 4 hereto; . . ."

5. New Paragraph. A new paragraph shall be added to the Easement Agreement as follows:

8. Arbitration. The owner of Lot 1 and the owner of Lot 2 agree that any disputes or controversies regarding issues of maintenance, repair, alterations, changes, or expansions of the dock shall be settled by arbitration. Such arbitration shall be in accordance with the rules of the American Arbitration Association, but the selection of the arbitrator shall be by agreement of the parties. In the absence of an agreement by the parties, selecting an arbitrator within thirty (30) days after any dispute or controversy arises, the parties agree that either party may submit the dispute or controversy to the American Arbitration Association for resolution.

6. Clarification. Mercer Construction, as owner of Lot 1 and Lot 2 hereby declares that Lot 1 has no obligation to repair nor maintain any road or access easement to the pump station as referred to in that certain Easement for Sewer Lines and Pump Station recorded under Auditors file no. 5751000.

7. "As-Built". Mercer Construction warrants that the representations made in recital D. above are accurate. Mercer Construction agrees that at such time as a private roadway tract is completed and paved, Mercer Construction agrees to (a) cause an "as-built" survey of said road tract to be prepared at no expense to Gottlieb and (b) cause an agreement to be prepared in recordable form at no cost to Gottlieb acknowledging the "as-built" location of the private road tract. Gottlieb agrees to execute said agreement provided the road has been paved in accordance with the representations and warranties of this Agreement.

8. Driveway Access. The following paragraph shall be added to the end of paragraph 1 of the Easement Agreement.

9002060440

Mercer Constuction grants, conveys and warrants to Gottlieb a perpetual non-exclusive pedestrian access easement on, through, over and across the driveway on Lot 2, for the purpose of access to the Easement Area.

9. Fence Enclosure: Within sixty (60) days from date hereof, Mercer Construction agrees to construct, at Gottlieb's cost and expense, a fence enclosure and a gate (at a location to be determined by Gottlieb) so as to enclose the Puget Power equipment box located in the northeast corner of Lot 1. The materials and quality of the construction shall match the existing fence.

10. Recording. Gottlieb and Mercer Construction agree that this Supplemental Easement Agreement shall be recorded prior to the recordation of the conveyance by Mercer Construction to Gottlieb.

11. Execution in Counterparts. This Agreement may be executed and delivered in two or more counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and Agreement.

MERCER CONSTRUCTION AND  
DEVELOPMENT, INC.

By: [Signature]  
Its President

[Signature]  
Robert Gottlieb

[Signature]  
Lorri Gottlieb

9002060440

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this day personally appeared before me Robert Gottlieb and Lorri Gottlieb, husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged to me 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 5<sup>th</sup> day of February, 1990.

Neil Schachle  
NOTARY PUBLIC in and for the  
State of Washington.  
My Commission expires 6/29/91.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

THIS IS TO CERTIFY that on this 5 day of February, 1990, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared Grant Beck, to me known to be the President of Mercer Construction & Development, 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 they were authorized to execute said instrument.

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

Neil Schachle  
NOTARY PUBLIC in and for the  
State of Washington.  
My Commission expires January 1991

9002060440