

PARCEL NO.: 153-011-064
PROJECT: City of Salinas – Bardin Rd. Safe Routes to School
OWNER: Thomas A. Bengard, Bardin E. Bengard,
Tracy M. Pezzini and The Bengard Family Partnership

**RIGHT OF WAY AGREEMENT
(WITH ESCROW INSTRUCTIONS)**

THIS AGREEMENT is made and entered into by and between

Thomas A. Bengard, a married man, who acquired title as an unmarried man, as to an undivided 16% interest; Bardin E. Bengard, a married man, as his sole and separate property, as to an undivided 16% interest; Tracy M. Pezzini, a married woman, as her sole and separate property, as to an undivided 16% interest and the Bengard Family Partnership I, L.P., as to an undivided 52% interest,

(hereinafter called "Grantor"), and

City of Salinas, a charter city and municipal corporation,

(hereinafter called "City").

An instrument in the form of a Grant Deed ("Deed") covering the property particularly described therein ("Property"), has been executed concurrently with this Agreement and delivered to City representatives.

In consideration of which, and other considerations hereinafter set forth, it is mutually agreed as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for said document and shall relieve the City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement, except as stated in Paragraphs 2.E. and 2.F. below.

2. The City shall:

A. PAYMENT - Pay to the order of the Grantor the sum of One Thousand Dollars (\$1,000) as consideration in full for the Property, for the loss, replacement and moving of any improvements, and for entering into this Agreement. Said sum shall be paid when title to the Property has vested in City free and clear of all liens, encumbrances, assessments, easements and leases recorded or unrecorded, except for recorded public utility easements and public right of way.

B. RECORDATION OF INSTRUMENT - Accept the Deed and cause the same to be recorded in the office of the Monterey County Recorder at such time as when clear title can be conveyed and the consideration has been paid in full to Grantor

C. MISCELLANEOUS COSTS - Pay any escrow, title insurance, document preparation, notary fees and recording fees incurred in this transaction.

D. CLEARANCE OF BONDS, ASSESSMENTS, OR DELINQUENT TAXES - Have the authority to deduct and pay from the amount shown in Clause 2.A. above any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which the Deed records, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien as of the date of recordation of the Deed.

E. CONSTRUCTION AND RESTORATION – Shall, upon completion of construction, restore the temporary construction easement to a comparable or better condition than that which existed prior to City's project construction.

Said restoration/shall include relocation/restoration of any existing fence, conformance of any driveways and walkways impacted by the Project and relocation of any impacted private and public utilities. Grantor grants permission to City employees, its authorized agents, and contractors to enter its land on the northwest portion of the property in order to construct, at no expense to Grantor, a like-kind walkway extension to connect the existing walkway to Grantor's driveway as shown on the attached Exhibit A. City, its authorized agents or contractors, shall relocate any impacted fence on the Property or removed due to the project construction to the new right of way line.

In addition, Grantor grants permission to City employees, its authorized agents, and contractors to utilize Grantor's land around the connection of Grantor's private road to Alisal Road in order to conform the elevation change of Grantor's existing sidewalks, ADA compliant pedestrian ramps, and private road to the new street improvements of the project. Such work shall include that the City and/or its contractors will repave the asphalt within the temporary construction easement to conform to the new street improvements and repave any portion of the easement area that is in broken and in disrepair. Any such work shall be completed during project construction.

Upon completion of said construction, Grantor shall defend, indemnify, and hold harmless the City from any and all claims, damages, costs, judgments, or liability arising from the project described in this paragraph E including any use of the new walkway on Grantor's remaining property.

Grantor understands and agrees that upon completion of any such construction contract work, said fencing, any impacted private utilities, and the walkway, driveway and sidewalks on Grantor's remaining property will become the sole property of Grantor and Grantor will be responsible for all future maintenance, repair and replacement.

Grantor hereby grants City, its authorized agents and contractors, as part of the compensation set forth in section 2A, permission to enter onto Grantor's property, as needed, to perform the work described in this section. Said permission shall include, but not be limited to, the right to bring personnel and equipment onto Grantor's property for the purpose of completing the work.

All work shall be done at City expense in conjunction with City's project construction.

No streets shall be closed to thru traffic and no lane closures shall be allowed without a City-approved access plan. The contractor must provide a detailed traffic control plan to the City prior to starting work. The contractor also must give at least 10 calendar days' notice to all affected residents of upcoming work. The traffic control and access is planned to be done in stages so that the entirety of the road and parking is not taken up at one time. The street parking in front of the homes may be impacted in that residents may need to park down the street when work is done in front of the property but the contractor must give advance notice and will coordinate with residents.

F. INDEMNIFICATION - Indemnify and hold harmless Grantor from any and all claims, damages, costs, judgments, or liability proximately caused by City or its officers, employees, or agents specifically arising from City construction and restoration work on the Property.

3. The Grantor:

A. PAYMENT ON MORTGAGE OR DEED OF TRUST - Agrees that any or all monies payable under this Agreement up to and including the total amount of the unpaid principal and interest on the note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said mortgage(s) or deed(s) of trust, shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(s) entitled thereunder. Grantor shall cooperate with the Escrow Officer in obtaining lien clearance documents from any and all creditors holding liens against the Property.

B. LEASE INDEMNIFICATION - Warrants there are no oral or written leases on all or any portion of the Property, or if there are such leases, Grantor agrees to hold the City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any lease of said Property held by tenant of Grantor.

C. PERMISSION TO ENTER - Hereby grants to the City, its agents and contractors, permission to enter the Property prior to the close of escrow for the purposes of preparation for the construction of the City's facilities, subject to all applicable terms and conditions contained in this Agreement and the associated Deed. No construction will take place until after payment under section 2A above has been tendered to Grantor.

D. TITLE INDEMNITY AND WARRANTY - In consideration of the City waiving the requirements to clear any defects and imperfections in all matters of record title, the Grantor indemnifies and holds the City harmless from any and all claims that other parties may make or assert on the title to the Property. Grantor's obligation to indemnify the City shall not exceed the amount paid to the Grantor under this Agreement. Grantor hereby represents and warrants that he/she/they are the sole vested owners of the Property, holding all ownership and possessory rights, and are the authorized signatories to grant the rights referenced in this Agreement without conflict or claims from other parties.

E. HAZARDOUS SUBSTANCES - Represents and warrants, to the best of Grantor's knowledge, and after reasonable inquiry, the following:

During Grantor's ownership of the Property, Grantor knows of no disposal, releases, or threatened releases of hazardous substances on, from, or under the Property. Grantor further

represents and warrants that Grantor has no knowledge of disposal, release, or threatened release of hazardous substances on, from, or under the Property which may have occurred prior to Grantor's ownership.

There is no pending claim, lawsuit, agency proceeding, or any administrative challenge concerning the presence or use of hazardous substances on or within the Property or Grantor's remaining adjacent property.

Grantor has not used the Property for any industrial operations that use hazardous substances. Grantor is not aware of any prior use of such property. Grantor has not installed any underground storage tanks, above ground storage tanks, barrels, sumps, impoundments or other containers used to contain hazardous substances on any part of the Property. Grantors are not aware of any such prior installations. The purchase price of the Property being acquired reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which require mitigation under Federal or State law, City may elect to recover its cleanup costs from those who caused or contributed to the contamination. This section excludes the use, storage and disposal of pesticides, herbicides, fertilizers and other chemicals customarily used in agricultural activities, and asbestose, lead-based paint and PCBs in any buildings on the adjacent property.

4. The Parties agree:

A. ESCROW - At City's option, to open an escrow in accordance with this Agreement at an escrow company of City's choice. Opening an escrow shall be at City's sole discretion and City may decide to process this transaction without the use of an escrow agent. However, if an escrow agent is utilized, this Agreement constitutes the joint escrow instructions of City and Grantor, and the escrow agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

If an escrow is utilized, as soon as possible after opening of escrow, City will deposit the executed Deed by Grantor, with Certificate of Acceptance attached, with the escrow agent on Grantor's behalf. City agrees to deposit the purchase price upon demand of escrow agent. City and Grantor agree to deposit with escrow agent all additional instruments as may be necessary to complete this transaction. All funds received in this escrow shall be deposited with other escrow funds in a general escrow fund account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

Any taxes which have been paid by Grantor, prior to opening of this escrow, shall not be pro-rated between City and Grantor, but Grantor shall have the sole right after close of escrow, to apply to the County Tax Collector of said County for any refund of such taxes which may be due Grantor for the period after City's acquisition.

- i) ESCROW AGENT DIRECTIVES - Escrow Agent is authorized to, and shall:

- a) Pay and charge Grantor for any unpaid delinquent taxes and/or any penalties and interest thereon, and for any delinquent assessments or bonds against that portion of Grantor's property subject to this transaction as required to convey clear title.
- b) Pay and charge City for any escrow fees, charges and costs payable under Paragraph 2.C. of this Agreement;
- c) Disburse funds and deliver Deed when conditions of this escrow have been fulfilled by City and Grantor.
- d) Following recording of Deed from Grantor, if requested by City, provide City with a CLTA Standard Coverage Policy of Title Insurance in the amount of \$1,000 issued by a Title Company of City's choice showing that title to the Property is vested in City, subject only to the following exceptions, and the printed exceptions and stipulations in said policy:
 - 1) Real Property Taxes for the fiscal year in which escrow closes;
 - 2) Public utility easements and public rights of way;
 - 3) Items No. 3-22 of the preliminary title report issued by First American Title Company, dated September 19, 2018, referenced as Order No. 2701-5795405;
 - 4) Other items that may be approved in writing by City in advance of the close of escrow.

ii) CLOSE OF ESCROW - The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is hereby authorized. If escrow has not closed by March 15, 2020, all escrowed funds shall be returned to the party that deposited them, the deed shall be returned to Grantor, escrow cancellation charges shall be paid by City, and this Agreement shall be terminated and of no further effect.

B. JUDGMENT IN LIEU OF DEED - In the event Grantor does not deliver title in a reasonable time under the terms of the Agreement, the City may file an action in eminent domain to pursue the acquisition of the Property, and this Agreement shall constitute a stipulation which may be filed in said proceedings as final and conclusive evidence of the total amount of damages for the taking, including all of the items listed in Section 1260.230 of the Code of Civil Procedure, regarding said property rights.

C. ARTICLE HEADINGS - Article headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

D. COMPLETE UNDERSTANDING - This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements or understandings, written or oral.

This Agreement may not be amended except in writing by the parties hereto or their successors or assigns.

E. CITY COUNCIL APPROVAL - This Agreement is subject to and conditioned upon approval by the Salinas City Council. This Agreement is not binding upon the City until executed by the appropriate City official(s) acting in their authorized capacity.

F. COUNTERPARTS - This Agreement may be executed in counterparts, each of which so executed shall irrespective of the date of its execution and delivery be deemed an original, and all such counterparts together shall constitute one and the same document.

G. ELECTRONIC AND FACSIMILE SIGNATURES - In the event that the parties hereto utilize electronic or facsimile documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided following transmittal of the electronic or facsimile signature. Documents for recordation by the Clerk Recorder must contain original signatures.

No Obligation Other Than Those Set Forth Herein Will Be Recognized.

GRANTOR:


Thomas A. Bengard

Date: 11/21/19


Bardin E. Bengard

Date: 11/21/19


Tracy M. Pezzini

Date: 11/21/19

The Bengard Family Partnership I, L.P.

By The Bengard Family Trust U/A Dated August 20, 1982, its General Partner

 b7:

 his-attorney-in-fact

Date: 11/21/19

Thomas D. Bengard, Trustee
by Bardin E. Bengard as his attorney in fact

GRANTOR'S MAILING ADDRESS:

Bengard Family

P.O. Box 80090

Salinas, CA 93912-0090

CITY OF SALINAS

By: _____

Name: Joe Gunter

Title: Mayor

Date: _____

MAILING ADDRESS OF CITY:

City of Salinas

Attn: Eda Herrera

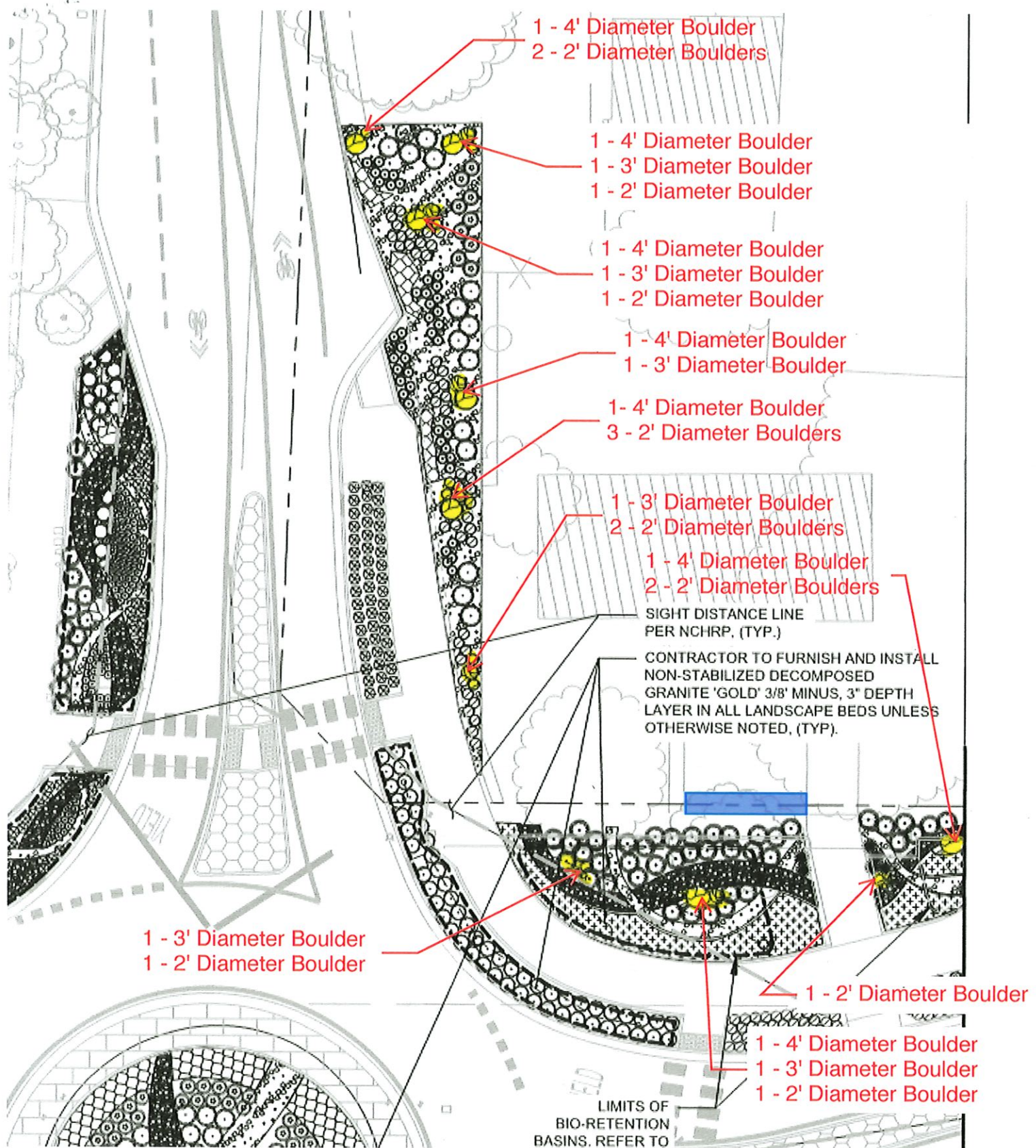
200 Lincoln Ave.

Salinas, CA 93901

Approved as to form:

Name: Christopher A. Callihan

Title: City Attorney



Sidewalk Extension:

Existing walkway to remain with extension of walkway towards the driveway.

Exhibit A To Right-of-Way Agreement

Recording requested by:
Hamner, Jewell & Associates
Government Real Estate Services

When recorded, mail to:
City of Salinas
Attn: City Clerk
200 Lincoln Ave.
Salinas, CA 93901

Exempt from the \$75 Building and Jobs Act Fee per Gov't Code §27388.1(2)(D) Public Agency
No fee pursuant to Government Code § 6103
No Documentary Transfer Tax per R&T Code § 11922
No Recording Fee per Government Code § 27383

GRANT DEED
(To the City of Salinas)

APN: 153-011-064

For a valuable consideration, receipt of which is hereby acknowledged,

Thomas A. Bengard, a married man, as his sole and separate property, who acquired title as an unmarried man, as to an undivided 16% interest; Bardin E. Bengard, a married man, as his sole and separate property, as to an undivided 16% interest; Tracy M. Pezzini, a married woman, as her sole and separate property, as to an undivided 16% interest and the Bengard Family Partnership I, L.P., as to an undivided 52% interest,

(hereinafter referred to as "Grantor"),

hereby grants to the City of Salinas, a charter City and Municipal Corporation

(hereinafter referred to as "Grantee"),

the following described interests in real property located in the City of Salinas, County of Monterey, State of California:

In Fee:

All that certain property described in Exhibit "A" and depicted in Exhibit "B", attached hereto and incorporated herein; and

Temporary Construction Easement

A temporary easement for construction and related purposes, in, on, over, under, along, through, and across that certain portion of land, described in Exhibit "C" and depicted in Exhibit "D", attached hereto and incorporated herein.

Said Temporary Construction Easement shall commence on November 1, 2019, and shall

automatically terminate upon completion of Grantee's construction, or October 31, 2022, whichever occurs first. Grantor shall have use of the property described in Exhibit "C" and depicted in Exhibit "D" until Grantee takes physical possession.

In case of unpredictable delays in construction, upon written notification, the terms of the Temporary Easement may be extended by an amendment to this deed. Grantor shall be compensated based on the fair market value of the Temporary Construction Easement area described in Exhibit "C" and depicted in Exhibit "D" at the time of the extension. Payment shall be made to the Grantor for the extension prior to the expiration of the original period.

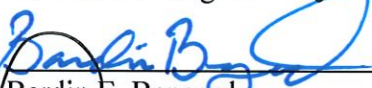
Upon completion of construction of Grantee's project, except vegetation, said Temporary Construction Easement area shall be generally restored by Grantee to the condition that existed prior to construction, to the extent reasonably practical.

The provisions hereof shall inure to the benefit of the Grantee, its successors and assigns, and shall bind the heirs, executors, administrators, assigns and successors in interest of the respective parties hereto, and all covenants shall apply to and run with the above-described property.

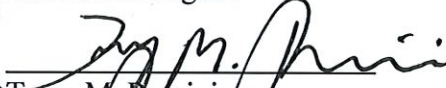
GRANTOR:


Thomas A. Bengard

Date: 11/21/19


Bardin E. Bengard



Date: 11/21/19


Tracy M. Pezzini

Date: 11-21-19

The Bengard Family Partnership I, L.P.

By The Bengard Family Trust U/A Dated August 20, 1982, its General Partner



Thomas D. Bengard, Trustee
by Bardin E. Bengard as his attorney in fact

Date: 11/21/19

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

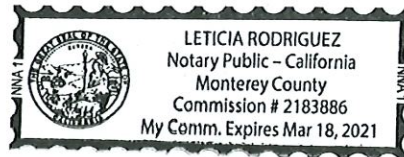
County of Monterey

On November 21, 2019 before me, Leticia Rodriguez, Notary Public, personally appeared Thomas A. Bengard, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Leticia Rodriguez (Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Monterey

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WITNESS my hand and official seal.

Signature Leticia Rodriguez (Seal)

