

20545

20562

A-27316

Willits Deed File
Vol. M 76 Page 20879
m
Vol. 76 Page 16967

JOINT USE AND MUTUAL EASEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 3rd day of October, 1976, by and between JERRY MOLATORE and BLAIR M. HENDERSON, hereinafter referred to as Parties of the First Part, and NYBACK'S FLOWERS, INC., hereinafter referred to as Party of the Second Part;

WITNESSETH:

The Parties recite and declare that:

(a) Parties of the First Part are purchasing the following described real property, located in the City of Klamath Falls, County of Klamath, State of Oregon:

THE FOLLOWING PROPERTY:
The Westerly one-half of Lot 7, Block 36, Original Town of Linkville, SAVING AND EXCEPTING that portion of Lot 7 conveyed by L. F. Willits and Laura A. Willits to Charles E. Worden by deed dated October 10, 1905, and recorded October 10, 1905, in Volume 18, page 499, records of Klamath County, Oregon, and that portion of said Lot 7 deeded by L. F. Willits and Laura A. Willits to Odd Fellows Hall Association by deed dated May 14, 1910, and recorded May 14, 1910, in Volume 29 on page 183, records of Klamath County, Oregon, ALSO SAVING and EXCEPTING the Southeasterly 8 feet of said Lot 7 for alleyway; and

(b) WHEREAS, Party of the Second Part is purchasing the following described real property, located in the City of Klamath Falls, County of Klamath, State of Oregon:

THE FOLLOWING PROPERTY:
The Easterly one-half of Lot 7, Block 36, Original Town of Linkville, SAVING AND EXCEPTING that Portion of said Lot 7 conveyed by L. F. Willits and Laura A. Willits to Charles E. Worden by deed dated October 10, 1905, and recorded October 10, 1905, in Volume 18, page 499, records of Klamath County, Oregon, and that portion of said Lot 7 deeded by L. F. Willits and Laura A. Willits to Odd Fellows Hall Association by deed dated May 14, 1910, and recorded May 14, 1910, in

BLAIR M. HENDERSON
ATTORNEY AT LAW
325 MAIN STREET - SUITE A
KLAMATH FALLS, OREGON 97601
TELEPHONE 884-7731

THIS AGREEMENT IS REFERENCED TO CORRECT
AN ERROR IN RECORDING U76 PAGE 16967

'76 OCT 25 PM 3 50

'76 DEC 30 AM 11 49

Volume 29 on page 183, records of Klamath County, Oregon; ALSO SAVING AND EXCEPTING the Southeasterly 8 feet of said Lot 7 for alleyway; and

(c) Whereas, upon said property is located a two-story building with a basement, the center wall of which is on the easterly property line of the property being purchased by Parties of the First Part, and on the westerly property line of the property being purchased by the Party of the Second Part, which wall constitutes a common wall and boundary between the properties being purchased by Parties of the First Part and Party of the Second Part; and

(d) Whereas, the above-described common-wall constitutes a party-wall and that the Parties hereto desire that such wall be and remain a party-wall.

For the reasons set forth above, and in consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

(1) The wall shall constitute a party-wall, and Parties of the First Part shall have the right to use the same jointly with Party of the Second Part.

(2) Permission is hereby given by Parties of the First Part to Party of the Second Part, and Party of the Second Part hereby gives permission to the Parties of the First Part to leave the walls as they now stand on the property line.

(3) Should such wall be damaged or destroyed by the default, negligence or other act or omission of one of the parties,

1 the responsible party shall rebuild and repair the wall and shall
2 compensate the other party for any damages to the property of the
3 other party.

4 (4) Should the wall at any time while in use by both
5 parties as aforesaid be injured by any cause other than the act or
6 omission of either party, the wall shall be repaired or rebuilt at
7 their joint expense; provided, that any sum received from insurance
8 against such injury or destruction shall first be applied to such
9 repair or restoration.

10 (5) That in said building there is a common heating
11 system, the central heating unit for said system being located
12 upon the property of the Party of the Second Part; the Party of the
13 Second Part hereby grants and conveys to the Parties of the First
14 Part an easement over and across their land for the purpose of
15 keeping and maintaining in repair said heating unit system.

16 (6) It is agreed and understood that should such heating
17 system be damaged or destroyed by the default, negligence or other
18 act or omission of one of the parties, the responsible party shall
19 rebuild or repair said heating system and shall compensate the other
20 party for any damages to property of the other party. Should the
21 heating system while in use by both parties for the heating of said
22 building be damaged or come into disrepair by any cause other than
23 the act or omission by either party, said heating system shall be
24 repaired or rebuilt at the joint expense of both parties; provided,
25 that any sum received from insurance against such damage or cost
26 of repair shall first be applied to said repair or restoration,
and provided, further, that in the event either party desires no

1 longer to use said heating system, but desires to install a new
2 heating system, that that party's obligation for repair or
3 maintenance of the existing heating system shall thereafter cease.

4 (7) It is agreed and understood that there exists a
5 common roof over the property of the parties hereto, and the
6 parties agree as follows:

7 (a) Should such roof be damaged or destroyed by the
8 default, negligence or other act or omission of one of the parties,
9 such party shall rebuild or repair said roof and shall compensate
10 the other party for any damages to the property of the other
11 party. Should the roof at any time while in use by both parties
12 as aforesaid be injured or by any cause other than the act or
13 omission of either party be damaged, said roof shall be repaired
14 or rebuilt at the joint expense of the parties hereto; provided,
15 that any sum received from insurance against such damage or
16 cost of repair shall first be applied to such repair or restoration.
17 It is further agreed and understood that the obligation of
18 maintaining in good repair of the said roof shall be the joint
19 obligation of both parties and the expense of said maintenance
20 shall be divided equally between the parties.

21 (8) It is agreed and understood that the only existing
22 access to the basement portion of the building for both parties
23 of the First and Second Part is through and down a stairway
24 located upon the property owned by Parties of the First Part.
25 Parties of the First Part hereby grant, sell and convey unto the
26 Party of the Second Part the right, privilege and easement to use

BLAIR M. HENDERSON
ATTORNEY AT LAW
325 MAIN STREET - SUITE A
KLAMATH FALLS, OREGON 97601
TELEPHONE 884-7731

1 the aforementioned stairway now existing on the property owned by
2 Parties of the First Part. The stairway is of the width of 36
3 inches between walls and is for the purpose of access and egress
4 from the above-described basement running under the building
5 located on the property of the Parties of the First Part and the
6 Party of the Second Part as herein described.

7 The Parties of the First Part hereby grant, sell and convey
8 unto the Party of the Second Part the right of access through said
9 stairway through the existing rear entrance in and to the building
10 existing on the land owned by the Parties of the First Part for
11 the purposes of ingress and egress to and from said stairway and
12 basement premises.

13 (9) The rights and easements for the use of said rear
14 entrance and stairway as herein set forth is for a period of one
15 year from the date of the execution of this agreement.

16 (10) It is agreed and understood that there are common
17 hallways and restrooms located upon the second floor of the herein
18 described building. Said hallways running through, over and upon
19 the properties of Parties of the First Part and Party of the
20 Second Part, and the restroom facilities of the within-described
21 building are located upon the property of the Parties of the First
22 Part. It is further understood and agreed that there are two
23 restrooms located therein. Party of the Second Part hereby grant,
24 sell and convey unto Parties of the First Part a perpetual easement
25 over, across and through the hallway presently existing upon the
26 property of the Party of the Second Part; and Parties of the First

1 Part hereby grant, sell and convey unto the Party of the Second
2 Part a perpetual easement over, across and upon the hallway
3 presently located on the property of the Parties of the First Part
4 and access to, in and from the restrooms located on the property
5 owned by Parties of the First Part. The hallways are of the
6 width of ^{7 1/2"}~~8 1/2"~~ inches between walls, and the restrooms comprise
7 jointly an area of ^{approximately} 200 ^{sq} feet. It is agreed and understood that
8 should said hallways or restroom areas herein described be damaged
9 or destroyed by the default, negligence or other act or omission
10 of one of the parties, such party shall rebuild or repair said
11 hallways or restroom area and shall compensate the other party
12 for any damages to the property of the other party. Should the
13 hallways or restroom areas at any time while in the use of both
14 parties herein granted, be injured or damaged by any cause other
15 than the act or omission of either party, the hallways and restroom
16 areas shall be repaired or rebuilt at the joint expense of both
17 parties; provided, that any sum received from insurance against
18 such injury, destruction or damage shall first be applied to such
19 repair or restoration. It is further agreed and understood that
20 the parties hereto shall jointly bear the cost of maintenance of
21 said hallways and restroom areas.

22 (11) Duration and Effect of Agreement. This agreement
23 shall be perpetual in effect and the covenants herein contained
24 shall run with both parcels of land herein described, unless
25 said covenants specifically set out herein are for a shorter
26 period of time; this agreement shall not operate to convey to

BLAIR M. HENDERSON
ATTORNEY AT LAW
328 MAIN STREET - SUITE A
KLAMATH FALLS, OREGON 97601
TELEPHONE 884-7731

1 either party the fee to any part of the land owned or to be
2 acquired by either party, the creation of party-wall rights,
3 mutual easements and uses being the sole purpose hereof.

4 (12) In the event that the Parties of the First Part or
5 the Party of the Second Part shall decide to sell their respective
6 properties herein described, said selling party shall first offer
7 that property to the other party for the price and on the terms of
8 the intended sale. The Offeree shall have 30 days from such offer
9 in which to accept or reject the same. This provision shall inure
10 to the benefit of both parties, their heirs, representative and
11 assigns, and shall continue in force and effect until both parcels
12 of property herein described shall vest in common ownership.

13 IN WITNESS WHEREOF, the parties have executed this agree-
14 ment at Klamath Falls, Klamath County, Oregon, this 3rd day of
15 October, 1976, and Party of the Second Part has caused its
16 corporate name to be signed and its corporate seal to be affixed
17 hereunto by its officers duly authorized thereunto by order of its
18 Board of Directors:

19 NYBACK'S FLOWERS, INC.

20 By Alvin Nyback
President

21 By Ann Nyback
Secretary

22 Jerry Molato
23 Jerry Molatore

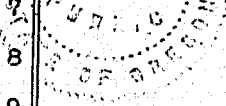
24 Blair M. Henderson
25 Blair M. Henderson
26

20886

16974

1 STATE OF OREGON }
2 County of Klamath) ss.

3 On the 4th day of October, 1976, personally appeared
4 before me the within named Jerry Molatore and Blair M. Henderson
5 and acknowledged to me that they executed the foregoing instrument
6 freely and voluntarily.



7 Betty J. Shuck
8 Notary Public for Oregon
9 My Commission Expires:

10 STATE OF OREGON }
11 County of Klamath) ss.

12 On this 4th day of October, 1976, personally appeared
13 before me the within named Alrick Nyback and
14 Nina Nyback, who, being duly sworn, each
15 severally and not one for the other, did say that the former
16 Alrick Nyback is president and that the latter
17 Nina Nyback is secretary of Nyback's Flowers,
18 Inc., an Oregon corporation, and that the seal affixed to the
19 foregoing instrument was signed and sealed in behalf of said
20 corporation by authority of its Board of Directors; and each of
21 them acknowledged said instrument to be its voluntary act and deed.



23 Betty J. Shuck
24 Notary Public for Oregon
25 My Commission Expires:
26

BLAIR M. HENDERSON
ATTORNEY AT LAW
325 MAIN STREET - SUITE A
KLAMATH FALLS, OREGON 97601
TELEPHONE 884-7731

JOINT USE AND MUTUAL EASEMENT AGREEMENT - Page 8

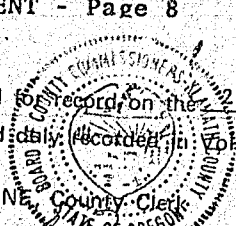
STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 25th day of
OCTOBER A.D., 1976 at 3:50 o'clock P.M., and duly recorded in Vol. M 76
of DEEDS on Page 16967.

FEE \$ 24.00

INDEXED
D

WM. D. MILNE, County Clerk
By Hazel Dray Deputy



STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 30th day of
DECEMBER A.D., 1976 at 11:49 o'clock A.M., and duly recorded in Vol. M 76
of DEEDS on Page 20879.

FEE \$ 24.00

WM. D. MILNE, County Clerk
By Hazel Dray Deputy