

AGREEMENT

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38-12004 THIS AGREEMENT made and entered into this 15 day of September, 1976, by and between DAVID L. TERHUNE and JEAN H. TERHUNE, husband and wife, 6522 Alva, Klamath Falls, Oregon 97601, hereinafter called "Terhune" and TWIN CITY BUILDERS, INC., an Oregon corporation, 1860 Virginia Avenue, Suite 5, North Bend, Oregon 97459, hereinafter called "Twin City Builders".

R E C I T A L S:

1. Twin City Builders in the owner of the following described real property situate in Klamath County, Oregon, to-wit:

A tract of land 320 feet wide North and South, in ENTERPRISE TRACTS NO. 38A and 41B, and lying North of the North line of the county road known as the extension of Eberlein Avenue and bounded on the North by the Northerly line of Wantland Avenue of Darrow Addition to the City of Klamath Falls, Oregon, extended East to the right of way of the U.S.R.S. Canal; also, such fragment of Enterprise Tracts No. 30 lying South of the U.S.R.S. Canal as may remain after conveyance heretofore made by Enterprise Land and Investment Company to the U.S.R.S. for right of way, and to Klamath County, Oregon, for road purposes, together with vacated portions of Allendale and Applewood Streets described as Parcels 1 & 2 in Book M-70 Page 4511, Klamath County, recorded June 5, 1970, in the SW 1/4 Section 34, Township 38 South, Range 9 East of the Willamette Meridian, EXCEPTING, HOWEVER, those certain parcels heretofore conveyed to the United States of America for right of way of the main canal and "B" Lateral of the United States of America Irrigation System, and to Klamath County, Oregon for rights of way of roads known as the extension of Eberlein Avenue and Washburn Way. EXCEPTING ALSO that certain parcel of land deeded by Alfred D. Collier and Ethel F. Collier, husband and wife, to Geo. H. Merryman and Mabel C. Merryman, husband and wife, and George H. Merryman, Jr. and Elizabeth F. Merryman, husband and wife, recorded May 2, 1941 in Book 137 at page 359, Deed Records of Klamath County, Oregon. EXCEPTING ALSO that certain parcel of land deeded by Alfred D. Collier and Ethel F. Collier, husband and wife, to Klamath County, Oregon, recorded May 11, 1941 in Book 137 at page 342, Deed Records of Klamath County, Oregon, BUT INCLUDING ALSO the rights and privileges reserved in said deed to Alfred D. Collier and Ethel F. Collier, said land being deeded to Klamath County, Oregon, for the use as a county road as therein set forth.

hereinafter called the "Twin City Builder's Property", upon which is located a geothermal hot water well and pipe lines distributing same.

2. Terhune is the owner of the following described property situate in Klamath County, Oregon, to-wit:

Lot 60 and the South 15 feet of Lot 59 of OLD ORCHARD MANOR TO THE CITY OF KLAMATH FALLS, Klamath County, Oregon

hereinafter called the "Terhune Property".

3. The parties hereto desire to enter into an agreement wherein Terhune will have the non-exclusive right to purchase geothermal hot water from Twin City Builders for a set fee:

W I T N E S S E T H:

NOW, THEREFORE, in consideration of the covenants herein contained the parties agree as follows:

A. Twin City Builders will supply geothermal hot water to a point on the Southerly boundary of the Terhune Property approximately 100 feet from the Southeast corner of said property.

B. Terhune will pay the sum of Fifty and No/100ths (\$50.00) DARS per year for the use of said geothermal hot water to be paid on or before the 1st day of November of each year. In the event that Terhune or their successors or assigns fail to pay the same, Twin City Builders, or their successors or assigns, may terminate this agreement upon thirty (30) days written notice if Terhune fails to remedy said deficiency within said thirty (30) day period.

C. Terhune will be allowed to discharge the geothermal hot water once they have used it into Twin City Builders discharge system. Terhune will in all ways save Twin City Builders harmless from all claims or loss from said geothermal hot water.

D. This agreement shall be perpetual except as herein otherwise stated and run with the land.

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B. It is understood and agreed by the parties hereto that water furnished by Twin City Builders is surplus water only provided after Twin City Builder's other needs have been met on adjoining land. Further, that Terhune will be entitled to such water as long as it is available, up to 10 gallons per minute, that such use will not exceed such amount. It is further understood and agreed that in the event the hot water supply should be discontinued, Twin City Builders can discontinue the supply to Terhune until such time as a supply is again available. It is further understood and agreed that Twin City Builders will not be responsible for any pipe or equipment on the property of Terhune nor the quantity or quality of the water received by Terhune.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first hereinabove written.

David L. Terhune
David L. Terhune

Jean H. Terhune
Jean H. Terhune

TWIN CITY BUILDERS, INC., an Oregon corporation.

By: [Signature]

By: [Signature]

OF OREGON)
County of) ss. January 21, 1977.
of)

Personally appeared the above-named DAVID L. TERHUNE and TERHUNE, husband and wife, and acknowledged the foregoing to be their voluntary act. Before me:

Richard J. Hatfield
Notary Public for Oregon
My Commission expires 12/31/80

2870

STATE OF OREGON

County of Cass

ss. January 21, 1977.

Personally appeared Frank James and Steve James, who, being duly sworn, each for himself did say that the former is the President and the latter is the Secretary of Twin City Builders, Inc., an Oregon corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and each of them acknowledged said instrument to be its voluntary act. Before me:

Kathleen J. Harfield
Notary Public for Oregon
My Commission expires: 6/24/80



Return: David L. Terhune
6522 Alva
Klamath Falls, Ore
97601

State of Oregon, } ss.
County of Klamath }
I hereby certify that the within instrument was received and filed for record on the 17th day of FEBRUARY, 19 77, at 11:10 o'clock A.M. and recorded on Page 2867 in Book M 77 Records of DEEDS of said County.

WM. D. MILNE, County Clerk
By Kazif Draz Deputy
Fee \$ 12.00