

AGREEMENT

THIS AGREEMENT made the date hereafter written between JOHN H. HODGES, SR., and JUANITA J. HODGES, husband and wife, hereafter called Hodges, and DAVID W. HAM and NANCY L. HAM, husband and wife, hereafter called Ham,

W I T N E S S E T H :

1.

Hodges owns the following described real property, to wit;

Lot 7 of Loma Linda Heights, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, said residence bearing the address of 711 Hillside Avenue, Klamath Falls, Oregon,

upon which there is now situate a hot water well in which Hodges has inserted a coil which is used to heat Hodges residence upon said real property and to heat hot water for domestic household use on said premises.

2.

Ham owns the following real property, to wit:

Lot 8 of Loma Linda Heights, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, said residence bearing the address of 705 Hillside Avenue, Klamath Falls, Oregon,

which said real property is contiguous to Hodges property and upon which Ham has construed a residence and Ham wishes to acquire an easement to use said well by tapping into the existing heating coil in Hodges said well for the purpose of heating said residence on Ham's said property and to heat hot water for domestic household use in said residence.

3.

Hodges, in consideration of one dollar and other valuable consideration, receipt of which he does hereby acknowledge, does hereby give and grant to Ham, their heirs, grantees, and assigns, the perpetual right and easement to use said well for the purpose of heating and furnishing domestic hot water for use in the residence Ham has constructed upon their said real property, together with right of ingress and egress for the purpose of maintaining, repairing and replacing said coil in said well and the pipes connecting said coil with their residence on the following terms and

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conditions which are declared of the essence of this Agreement:

- (a) Hodges, their heirs, grantees and assigns or Ham, their heirs, grantees and assigns will not have the right to allow any other party to tap into their common heating coil without the mutual consent of both Hodges, their heirs, grantees and assigns and Ham, their heirs, grantees and assigns.
- (b) Ham, their heirs, grantees and assigns will not remove or drain hot water from said system except as necessary to bleed air from the system without the consent of Hodges, their heirs, grantees and assigns.
- (c) Hodges, their heirs, grantees and assigns and Ham, their heirs, grantees and assigns will share equally in all future costs of maintenance, repair, replacement and improvement of the said hot water well, casing and heating coil, costs to be paid by the parties involved within 60 days from the date costs are incurred.
- (d) Hodges, their heirs, grantees and assigns and Ham, their heirs, grantees and assigns will share equally in the cost of taxes that are assessed on said hot well. In the event a third party is allowed to install a second heating coil in said well third party will be responsible for sharing equally in payment of taxes.
- (e) Hodges, their heirs, grantees and assigns will be responsible for costs incurred for maintenance, repair, replacement and improvement of hot water supply pipes that service Hodges residence.
- (f) Ham, their heirs, grantees and assigns will be responsible for costs incurred for maintenance, repair, replacement and improvement of hot water supply pipes that service Ham's residence.
- (g) Hodges, while owning the property at 711 Hillside Avenue, Klamath Falls, Oregon, will have the right to allow a third party to install a second heating coil in said well. In this event, the third party, their heirs, grantees and assigns shall be solely responsible for the installation, maintenance, repair and replacement of the coil which services their said property and shall repair or pay for at their sole expense, any damage done to Hodges and/or Hams said premises in such installation, repair and replacement and shall pay an equal share of all future costs of maintenance, repair, replacement and improvement of the said hot water well and casing. The third party, their heirs, grantees and assigns will be responsible for costs incurred for maintenance, repair, replacement and improvement of hot water supply pipes that service third party residence.

(h) Ham, their heirs, grantees and assigns shall hold Hodges, their heirs, grantees and assigns harmless from and indemnify them from any and all loss, damages, or claims arising or resulting, in whole or part, from the use of the easement herein granted.

4.

It is mutually covenanted and agreed by all of the parties herein on behalf of themselves and their respective heirs, grantees and assigns, that in the event that any owner of either of said parcels of land shall at any time hereafter institute any suit, action or proceeding to enforce any of the covenants or agreements herein contained and/or for damages for the breach of the same that the Courts, including Appellate Courts, may award the prevailing party in such a suit, action or proceeding such sums as it may adjudge reasonable for said prevailing party's attorney's fees therein, in addition to the costs and disbursements provided by law.

5.

It is understood and agreed between the parties hereto that this agreement be recorded in the Deed Records of Klamath County, Oregon, and does run with the land. In the event either party hereto shall sell or assign or otherwise transfer their interest in this land, that this agreement continue in force and bind said land to this obligation and any said assignee or transferee shall be likewise bound by this agreement to fully perform it.

6.

This agreement shall bind and inure to each of said parcels of land and be appurtenant thereto and run therewith, and be binding upon the heirs, administrators, personal representatives, and assigns of both parties.

IN WITNESS WHEREOF, the parties have executed this agreement this

12th day of March, 1978.

John H. Hodges, Sr.

Juanita J. Hodges

STATE OF OREGON

County of Klamath

) ss.

Personally appeared the above-named John H. Hodges, Sr., and Juanita J. Hodges, and acknowledged the foregoing instrument to be their voluntary act and deed on this 12th day of March, 1978.

STATE OF OREGON

County of Klamath

) ss.

Personally appeared the above-named David W. Ham and Nancy L. Ham, and acknowledged the foregoing instrument to be their voluntary act and deed on this 12th day of March, 1978.

APRIL

Notary Public for Oregon

My Commission Expires: Feb 8, 1982

Notary Public for Oregon

My Commission Expires: Feb 8, 1982

Return to

David W. Ham
705 Hillside Ave
Klamath Falls, Ore 97601

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STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of David W. Ham

this 13th day of April A. D. 19 78 at 1:04 o'clock P. M., and

duly recorded in Vol. M78, of Dania on Page 7131

Wm D. MILNE, County Clerk

Bernard J. Felock

Fee \$12.00

