

WELL-SITE CONVEYANCE, EASEMENT AND COVENANTS
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CONVEYANCE & EASEMENT

THIS AGREEMENT made on the date below signed by and between ROBERT J. BOGATAY and LINDA BOGATAY, husband and wife, hereinafter referred to as "Grantors" and BRYAN J. STUART and BARBARA STUART, husband and wife, hereinafter referred to as "Grantees", subject to the terms, conditions and covenants which follow:

1. PROPERTY OF GRANTORS. Grantors ROBERT J. BOGATAY and LINDA BOGATAY are the owners of the following described real property:

Lot 7 and Lot 6, less the Northerly 5 feet thereof, all in Block 42, HILLSIDE ADDITION, in the City of Klamath Falls, Klamath County, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

2. PROPERTY OF GRANTEE. Grantees BRYAN J. STUART and BARBARA STUART are the owners of the following described real property:

Lot 3, LOMA LINDA HEIGHTS, in the City of Klamath Falls, Klamath County, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

3. CONVEYANCE. Grantors hereby convey to Grantees their heirs, successors and assigns an undivided 1/2 interest to a geothermal well and well site located as follows:

A square parcel 3 feet by 3 feet, the center point of which is situated 14 feet southwesterly at right angles from the Westerly line of Hillside Avenue and 5 feet Southeasterly at right angles from the common property lines separating Lot 7 and Lot 6, less the Northerly 5 feet thereof, from Lots 5 and the Southerly 5 feet of Lot 6 all of Block 42, HILLSIDE ADDITION, City of Klamath Falls, Oregon.

Together with a non-exclusive six foot wide easement appurtenant parallel with the Northerly boundary of said Lot 7 and Lot 6, less the Northerly 5 feet thereof, said centerline being Southeasterly 85 feet at right angles to said property line described above to the point of intersection with Hillside Avenue.

4. CONSIDERATION. The consideration for this conveyance and easement is payment of one-half the cost of well installation construction, receipt of which is hereby acknowledged, as and for a one-half interest in the well and easements conveyed.

5. RETAINED RIGHTS. Grantors and Grantees herein hereby expressly retain the right to join together and to convey remaining portions of their well site easements to one or more grantees appurtenant, subject to the conditions that

A) Consent of both Grantors shall be required;

B) Provided that no more than a total of five interests are created granting to no one grantee less than a 20% interest;

C) Additional interest created in such well shall be on such terms and under such conditions as Grantor and Grantee render and deem advisable, providing that said increase in use of

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said well does not materially affect the retained rights of the other parties in use of said well.

D) Subject to the terms, conditions and provisions of the covenants which follows.

COVENANTS

6. DESCRIPTION OF EASEMENT.

A. Grantors hereby convey to Grantees, their heirs, successors and assigns an exclusive easement as described above for the purpose of excavating, constructing and maintaining pipes to transmit hot water, and return cold water to the hydrothermal well located upon the real property described herein, together with a grant, the grantees, their heirs, successors and assigns shall have the right to a proportional share of the net effective radiated heat from said hydrothermal well for purposes of transmission of the same by underground pipes.

B. Grantors expressly reserve unto themselves, heirs, successors or assigns the rights to make use of all real property above which the easement has been granted, including the right to install walks, driveways, plants, shrubs, lawns and other landscaping and to erect improvements thereon, provided that such use of the real property does not materially interfere with Grantees right of easement or access thereto.

7. LIMITATIONS OF USE. The aforementioned hydrothermal well has been developed for use by the parties as a means of meeting all reasonable needs for space heating, domestic water heating, and such other heating needs of the residences on the properties, as are common and customary. No increase in the use of said well shall be pertained which will materially affect the retained rights of the other parties to the use of the well.

8. COSTS OF MAINTENANCE OF WELL. Grantors and Grantees expressly covenant and agree that they shall maintain all portions of the well and hot water delivery system from the point it leaves the pipes, valves and other apparatus common to more than one party hereto at their sole cost and expense; and that they shall maintain within the common system necessary valves to permit Grantors' and Grantees' systems to be turned off without affecting the others right to use the system. Grantors and Grantees expressly agree in the event it should be necessary for them to close down any portion of their systems, other than circumstances constituting an emergency, to provide notice to the others so that adequate safeguards may be taken to protect the others continued use of the system. Grantors and Grantees each agree to install and maintain all necessary pumps and valves and metering devices in order to cause flow of water to the respective parcels of real property.

9. OBLIGATION OF REPAIRS. Grantors and Grantees each agree to bear and pay a proportional share of all expenses necessarily incurred in the operation, repair and maintenance of the described hydrothermal well and of the individual loops serving the parcels of property described above. As to the well and repairs thereto, each party hereto agrees to pay a proportional share, based upon the number of existing users of the system at such time as repairs should be needed. As to the cost of repairs of the individual loops serving the respective properties of Grantors and Grantees, Grantors and Grantees shall be responsible to pay a proportional share of costs of repairs of the individual loops, divided by the number of users utilizing the individual loop.

10. PAYMENT OF REPAIRS. Grantors and Grantees each agree and covenant to pay within 60 days of demand thereof, all of the charges reasonably necessary for the operation, repair or maintenance of the hydrothermal well and those portions of the improvements common to and necessary for the enjoyment by each, together with the costs of landscaping and repair of property damaged through the process of excavation or repair. If either party fails to pay said sum or elects not to pay to repair said improvements within the period described above, the non-defaulting party may suspend the right of the defaulting party to use said well. Further, this agreement and the rights thereto may be terminated upon election of the non-defaulting parties, or their grantors, successors or heirs if any defaulting party fails to pay said sum within one year after it is due. A default by any party or their successors, heirs or assigns shall terminate the right of such party to use said well together with the easements thereto. Extinguishment of the rights between one or another shall be through the court of law.
11. RIGHT OF EASEMENT. Each party grants to each other their respective heirs, successors and assigns, and for the benefit of the respective properties the perpetual rights to easement in and to the hot water well and of ingress and egress upon the property for the purpose of installing and maintaining, repairing or replacing the well and casing, the heat recovery system in the well, the well head pump and the pipe from the well to the respective residences; provided however that Grantors may, as a condition to providing consent to entry demand sufficient, suitable assurance that the party causing said work to be done shall, promptly upon completion of said work return the premises to the conditions as they were, prior to the work being started, including the replacement of landscaping, lawns and sprinklers.
12. GUARANTY. No party guarantees to any other party the availability, amount, extent or quality of the heat or water to be obtained from the well.
13. ELECTRICAL COST OF THE WELL-HEAD PUMP. The parties hereto agree that they will share equally the yearly electrical costs of the well-head pump, utilized by them on their property.
14. PROPERTY TAXES ON WELL. The parties hereto agree that they will share equally the yearly property taxes on the geothermal well.
15. WASTE. The parties hereto agree not to unnecessarily waste or dissipate the water of heat from the well.
16. BINDING. This agreement is binding upon and shall enure to the benefit of the parties hereto and their heirs, grantees, executors, and assigns, as a benefit and burden that runs with the land.
17. ATTORNEY'S FEES. In the event any suit or action is brought to enforce the terms of this agreement, the prevailing party therein shall be entitled to recover from the losing party such sums as may be adjudged reasonable as attorney's fees in trial court or on appeal.
18. GRANT RUNS WITH LAND. Covenants and agreements herein contained including the covenants and agreements in respect to payments to be made by either party to the other for the use of WELL-SITE CONVEYANCE, EASEMENT AND COVENANTS, page 3

said well shall run with the land and the liability to perform and the right to enforce performance of the same shall pass to the heirs and assignees of the respective parties hereto provided that no person shall be personally liable for the breach of any of the covenants and agreements herein contained unless such breach was committed during the ownership of the land.

19. COMPLETE AGREEMENT. This agreement contains the complete agreement between the parties and may not be modified except by written agreement signed by all of the parties.

DATED this 3rd day of September, 1983.

Robert J. Bogatay
ROBERT J. BOGATAY, Grantor

Bryan J. Stuart
BRYAN J. STUART, Grantee

Linda Bogatay
LINDA BOGATAY, Grantor

Barbara Stuart
BARBARA STUART, Grantee

STATE OF OREGON)
) ss
County of Klamath)

Be it remembered that on this 3rd day of September, 1983, before me, the undersigned Notary Public in and for said County and State, personally appeared the within named ROBERT J. BOGATAY and LINDA BOGATAY, known to be to be the identical individuals described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Brad A. Smith
NOTARY PUBLIC FOR OREGON

My commission expires: Feb 3, 1987

STATE OF OREGON)
) ss
County of Klamath)

Be it remembered that on this 2^d day of September, 1983, before me, the undersigned Notary Public in and for said County and State, personally appeared the within named BRYAN J. STUART and BARBARA STUART, known to me to be the identical individuals described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Brad A. Smith
NOTARY PUBLIC FOR OREGON

My commission expires: Feb 3, 1983

WELL-SITE CONVEYANCE, EASEMENT AND COVENANTS, page 4

STATE OF OREGON: COUNTY OF KLAMATH ;ss

I hereby certify that the within instrument was received and filed for record on the 7th day of September A.D., 19 83 at 3:17 o'clock P M and duly recorded in Vol M83, of Deeds on page 15223

FEE \$ 16.00

EVELYN BIEHN COUNTY CLERK

by Barbara J. Smith Deputy

Return to:

Barbara J. Smith
123 5th St NW
Albany, Idaho 83621