

Aspen 02033310

AGREEMENT CREATING EASEMENT FOR
SHARED WELL AND LIGHT AND VIEW

PARTIES: DEBORAH N. HART and IRVING H. HART, III (Hart)
as owners and in possession of real property known as
2052 Lavey Street (Parcel 2052) described below; and

JERRY G. APT (Apt)
as owner and in possession of real property known as 2036
Lavey Street (Parcel 2036), described below.

RECITALS:

The parties to this agreement are also parties this date to an Agreement of Purchase and Sale by which Apt has purchased Parcel 2036 from Hart. and this agreement is incorporated the Agreement of Purchase and Sale by reference

The parties intend to create a permanent easement and joint agreement for the maintenance, repair, operation and use of the geothermal well (the Well) now existing on Parcel 2036 and serving the residences on Parcel 2036 and Parcel 2052, and to create an easement of light and view benefitting Parcel 2052 and restricting the height of any buildings which may be constructed in the future on Parcel 2036.

AGREEMENT:

In consideration of the premises and the purchase and sale of Parcel 2036 the parties agree:

1. LEGAL DESCRIPTIONS:

Parcel 2036 is legally described as follows:

The Westerly 110 feet of Lot 16, Block 43, HILLSIDE ADDITION TO THE CITY OF KLAMATH FALLS, OREGON, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at the Northwest corner of said Lot 16; thence South along Haskins Avenue 50 feet to the Southwest corner of said Lot; thence Northeasterly along the Southerly line of said Lot 110 feet; thence Northwesterly parallel with Haskins Avenue 50 feet to Lavey Street; thence Southwesterly along Lavey Street 110 feet to the place of beginning.

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Parcel 2052 is adjacent to Parcel 2036 and is legally described as follows:

The Easterly rectangular 100.0 feet of Lots 15 and 16 in Block 48 of Hillside Addition to the City of Klamath Falls, according to the official plat thereof on file in the records of Klamath County, Oregon, more particularly described as follows:

Beginning at the most Northerly corner of said Lot 16; thence Southeasterly parallel to Haskins Street 100.0 feet to the Southeasterly corner of said Lot 15; thence southwesterly along the Southerly line of Lot 15, 100.0 feet to a point; thence Northwesterly and parallel to Haskins Street 100.0 feet to the Northerly line of said Lot 16; thence Northeasterly 100.0 feet to the point of beginning.

2. PERMANENT EASEMENT:

2.1. Well Easement. Apt hereby grants and conveys to Hart a permanent easement on, over, across, along and beneath Parcel 2036. Such easement grants to Hart, their respective heirs, grantees, personal representatives and assigns, the perpetual right and easement in and to the Well, and of ingress and egress upon PARCEL 2036 for the purpose of installing, maintaining, repairing, and replacing the Well and casing, the coil system in the Well, and the pipe from the Well to the respective residences, and for purposes of measurement of the level and temperature of the water.

2.2. Light and View Easement. Apt grants Hart the free and uninterrupted access and enjoyment of light and view over and across Parcel 2036 for the windows and roof of the building that is at present situated on Parcel 2052, and Apt will restrict the height of any building constructed on Parcel 2036 in the future to one story in height from the level of Lavey Street.

3. PURPOSE OF WELL:

The Well is intended to serve the reasonable needs for space heating, domestic water heat, and such other heating needs of the residences on the properties of the respective parties as they now exist.

4. RIGHT OF USE:

A coil system exists in the Well which is sufficient to meet ordinary heating needs of both residences as they exist on the date of this agreement. Any expansion of use by either party will be allowed only on written agreement of both parties.

5. MAINTENANCE AND REPAIR:

If, in the judgment of either party, repair or maintenance work is required, a written estimate of the cost of repair will be obtained. Work will be undertaken only after both parties accept the estimate. In the event service from the Well is disrupted, and there is disagreement as to the cost or extent of repair, after notice of intention to proceed to the other party, a party may proceed to have the repair or maintenance work done at that party's expense and to charge the other party for fifty-percent of the cost. Such charge may be collection through the collection escrow account of the parties at Aspen Title Co.

6. GUARANTEE:

No party guarantees to any other party the availability, amount, extent, or quality of the heat or water to be obtained from the Well. The parties acknowledge that in winter weather it is often necessary to supplement hot water heat with heat from other sources.

7. PROPERTY TAXES ON WELL:

Should the assessed valuation of either property be increased due to the existence of the Well, any increased taxes to either party will be shared equally by the parties.

8. PUC:

The parties have not obtained any Public Utility Commission approval for this agreement, and in the event the Public Utility Commission or any other governmental agency requires approval, the parties shall cooperate in obtaining such approval and share equally all reasonable costs incurred thereby. In the event such approval is not obtained, the parties agree to hold each other harmless from any claim or cause of action as a result of the failure to obtain such approval.

9. TERMINATION.

13.1. Hart's Cessation of Use. Hart may terminate this agreement by 60 days notice in writing of their intention to cease their use of the Well and to disconnect their residence. Upon such termination, Hart will bear any expense necessary in the disconnection.

13.2 Apt's Dedication of Use. Apt may terminate this agreement by 60 days notice in writing to Hart of his intention to disconnect Hart from the Well; provided that, in

such event, Apt shall pay Hart \$10,000 in cash or certified funds on or before the sixtieth day after such notice.

10. EASEMENT TO RUN WITH THE LAND.

This grant of easement shall run with the land and shall be binding on and shall inure to the benefit of the parties to this agreement, their respective heirs, representatives, successors or assigns.

11. HOLD HARMLESS:

If any claims, demands, costs, or judgements shall result from the negligence of a party in regard to the ownership or use of the Well, referred to above, the water or heat from the Well, or any pipes or devices employed to utilize the Well as a heat source, the negligent party shall hold the other parties to this agreement harmless from any and all liability, loss, or damage resulting from such claims, demands, costs, or judgements.

12. WASTE:

The parties agree not to unnecessarily waste or dissipate the water or heat from the Well. Each party shall use the Well and the heat it produces conservatively in recognition that the hot water is an exhaustible resource.

13. 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.

14. ENTIRE AGREEMENT:

This agreement contains the complete agreement between the parties and may not be amended or modified except in writing.

15. NOTICES:

Any notice provided for or concerning this agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail or sent to the respective address of each party as set forth below their signatures.

16. MODIFICATION:

Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed
at KLAMATH FALLS, OR on 27 APRIL, 1989.

SELLER

Irving H. Hart III
IRVING H. HART, III

Deborah N. Hart
DEBORAH N. HART
2052 Lavey
Klamath Falls, Oregon 97601
Phone: 503/884-1807

PURCHASER

Jerry G. Apt.
JERRY G. APT.
2036 Lavey
Klamath Falls, Oregon 97601
Phone:

STATE OF OREGON

County of Klamath

This instrument was acknowledged before me on April 28, 1989, 1989, by Irving H. Hart III and Deborah N. Hart.

Sandra Handsaker
NOTARY PUBLIC FOR OREGON

My Commission Expires: 7-23-89

STATE OF OREGON

County of Klamath

This instrument was acknowledged before me on April 27, 1989, 1989, by Jerry G.

Sandra Handsaker
NOTARY PUBLIC FOR OREGON

My Commission Expires: 7-23-89

STATE OF OREGON,
County of Klamath ss.

Filed for record at request of:

Aspen Title Co.

on this 28th day of April A.D. 19 89
at 2:24 o'clock P.M. and duly recorded
in Vol. M89 of Deeds Page 7383.
Evelyn Biehn County Clerk

By Pauline Mullender

Fee, \$28.00

Deputy.