

27032

MTC 25038
WELL AGREEMENT

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26475

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THIS AGREEMENT is made on the date set opposite of the signature of each party hereto, by and between RICHARD F. BOGATAY and TAMYRA BOGATAY, husband and wife, hereinafter referred to as "BOGATAY", and GERALD V. BREEDLOVE, hereinafter referred to as "BREEDLOVE".

In consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

1. RECITALS. The parties declare that the following facts are true. Bogatay is the owner of the real property described on Exhibit "A", attached hereto and made a part hereof, which property is hereinafter referred to as the "Bogatay property". Breedlove is the owner of the real property described on Exhibit "B", attached hereto and made a part hereof, which property is hereinafter referred to as the "Breedlove property". The Bogatay property contains a geothermal well, which supplies heat for residences located on the Bogatay property and for a residence located on the Breedlove property. The well is serviced by four pumps: one circulating pump located on the Bogatay property, one circulating pump located on the Breedlove property, and two pumps located at the well site, a sump pump and a circulating well pump which services the pipe in the well which supplies water to both the Bogatay property and the Breedlove property. The sump pump and the circulating well pump are hereinafter referred to as the "well pumps".

2. USE BY BREEDLOVE. Bogatay grants to Breedlove the right to use water and heat from the well, to be obtained and used in accordance with this agreement.

3. BREEDLOVE'S RIGHTS. Breedlove shall have the rights to install and maintain in the well reasonable and necessary pipes and equipment for the purpose of obtaining heat and water from the well and transferring the heat and water to the Breedlove property. Bogatay grants to Breedlove the perpetual right of ingress and egress upon the Bogatay property for the purpose of installing, maintaining, repairing and replacing the pipes and equipment reasonable and necessary for Breedlove to obtain heat and water from the well.

4. GUARANTEE. Bogatay does not guarantee the availability, amount, extent or quality of the heat or water from the well.

5. LIMITATION ON USE. Breedlove agrees that the heat, and any water, obtained from the well shall be used only for space heating and domestic water heating purposes for a single family residence located on the Breedlove property. Bogatay shall use the heat or water from the well only for purposes of space heating and domestic hot water for residential units located on the Bogatay property.

6. PERMITS. Neither party has obtained any permits from any governmental agency regarding the well. In the event such permits are necessary, the parties agree to cooperate and to execute required documents.

7. RESTRICTIONS ON USE. Each party shall use the well in a manner which will not unreasonably interfere with use of the well by the other party.

8. MAINTENANCE. Any maintenance or repairs performed on any pipes or equipment which are used solely by Breedlove shall be paid for by Breedlove. Any maintenance or repairs performed on any pipes or equipment which are used solely by Bogatay shall be paid for

by Bogatay. Any maintenance performed on the well, or upon any pipes or equipment used by both Breedlove and Bogatay, shall be paid for equally by the parties.

9. WASTE. Each party agrees that he will not unnecessarily waste or dissipate any heat or water from the well.

10. BINDING. This agreement is binding upon and shall inure to the benefit of the parties hereto, and to their executors, assigns and heirs.

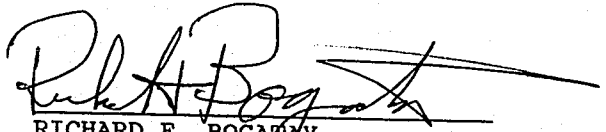
11. ATTORNEY'S FEES. In the event any suit or action is brought to enforce the terms of this agreement, the prevailing party therein shall be entitled to recover from the losing party such sums as may be adjudged reasonable as attorney's fees, in trial court or on appeal.

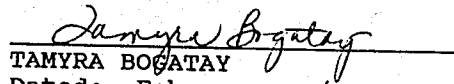
12. ELECTRICITY. The cost of electricity to operate the well pumps, and repairs, maintenance and replacement for the well pumps, shall be divided equally by the parties.

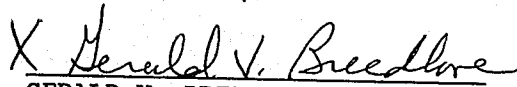
13. CITY OF KLAMATH FALLS. The parties acknowledge that the City of Klamath Falls operates a geothermal heating district and that in the future it may be possible for either or both of the parties to obtain heat from the City of Klamath Falls or a subsidiary thereof. Either party to this agreement shall therefore have the right to terminate this agreement and abandon his interest in the well. Either party may terminate this agreement and abandon his interest in the well upon the giving of 90 days notice in writing to the other party. In the event Breedlove terminates this agreement, Breedlove shall, at his expense, remove all pipes and equipment used solely by Breedlove from the well and from the Bogatay property, and shall restore the well and the property as nearly as practicable to

a condition for use solely by the Bogatay property. In the event Bogatay terminates this agreement, Bogatay shall, at his expense, remove all pipes and equipment used solely by Bogatay from the well and shall restore the well as nearly as practicable to a condition for use solely by the Breedlove property. Bogatay shall also execute an easement or any other documents reasonably necessary for Breedlove to maintain his right to enter upon the Bogatay property for purposes of maintaining the well.

14. PREPARATION. This agreement has been prepared by Jerry Molatore, Attorney at Law, on behalf of Bogatay. Breedlove acknowledges that Jerry Molatore does not represent him, and that he has been advised that he has the right to have this agreement reviewed by an attorney of his choice.

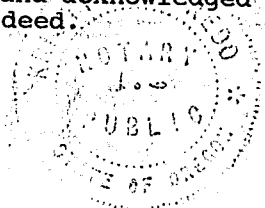

RICHARD F. BOGATAY
Dated: ~~February~~ march 1, 1991

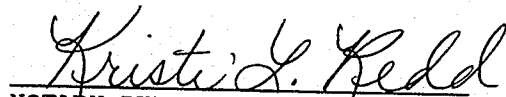

TAMYRA BOGATAY
Dated: ~~February~~ march 1, 1991

X 
GERALD V. BREEDLOVE
Dated: February 28, 1991

STATE OF OREGON)
) ss.
County of Klamath)

Before me personally appeared the above-named RICHARD F. BOGATAY and acknowledged the foregoing instrument to be his voluntary act and deed.




NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/16/91

4773

3804

STATE OF OREGON)
) ss.
 County of Klamath)

Before me personally appeared the above-named TAMYRA BOGATAY and acknowledged the foregoing instrument to be her voluntary act and deed.

Kristen L. Redd
 NOTARY PUBLIC FOR OREGON
 My Commission Expires: 11/16/91

Californian
 STATE OF OREGON)
)
 County of *San Bernardino*)

Before me personally appeared the above-named GERALD V. BREEDLOVE and acknowledged the foregoing instrument to be his voluntary act and deed.



Barbara E. Legette
 NOTARY PUBLIC FOR OREGON *Californian*
 My Commission Expires: May 26, 1991

Return to:

Gerry Molatore
426 main
Klamath Falls, OR 97601

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co. the 1st day
 of Feb. A.D., 19 91 at 3:54 o'clock P.M., and duly recorded in Vol. M91,
 of Deeds on Page 3800.

FEE \$48.00

Evelyn Biehn County Clerk

By *Carolyn M. ...*

INDEXED

FILED



EXHIBIT "A"

Lot 15, Block 57, SECOND HOT SPRINGS ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

EXHIBIT "B"

Lots 2, 3 and 4 in Block 4, WILLIAMS ADDITION to 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, LESS the North 10 feet thereof of Lot 2.

THIS DOCUMENT HAS PREVIOUSLY BEEN RECORDED AT
VOL. M91, PAGE 3800-3804. IT IS BEING RE-
RECORDED WITH THE PROPER EXHIBITS ATTACHED.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co. the 15th day
of March A.D., 19 91 at 3:16 o'clock P M., and duly recorded in Vol. M91,
of Deeds on Page 4769.

FEE \$40.00

Evelyn Biehn - County Clerk

By Caroline Neukirch