

AFTER RECORDING RETURN TO:
William P. Brandsness
411 Pine Street
Klamath Falls, OR 97601

08-05-93P03:12 RCDV

Vol. m93 Page 19414

65795

**GRANT OF RIGHTS IN GEOTHERMAL WELL
AND RELATED EASEMENTS;
WELL MAINTENANCE AGREEMENT**

DATE: July 30, 1993

PARTIES: THOMAS A. FILLMORE and
JUNE E. FILLMORE, husband and wife, "Grantors"
and LISA D. BROWN "Grantee"

RECITALS:

A. Grantors are the owners of a geothermal well, which was drilled on or about July 30, 1986 and situated in the Northeast corner of Lot 3, Block 16, Dixon Addition to the City of Klamath Falls, Oregon, hereinafter called the "Grantor's Parcel".

B. The Grantee has purchased a neighboring parcel of real property from the Grantors that is described as follows: Block 1B, Williams Addition to the City of Klamath Falls, Oregon, in the County of Klamath, State of Oregon. EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its State Highway Commission, recorded November 30, 1970 in Book M-70 at Page 10614, hereinafter called the "Grantee's Parcel", which is connected to the Geothermal well of the Grantors.

C. As a portion of the sale of the Grantee's Parcel to the Grantee by the Grantors, the Grantor's have agreed to convey an interest in the geothermal well and the distribution system to the Grantee under the terms and conditions set forth hereinafter.

AGREEMENT:

1. **Conveyance and Grant of Easement.** Grantors convey to Grantee an undivided one-half interest in their right, title and interest in the geothermal well, the pumps related to the geothermal well and all that portion of the distribution pipeline that extends from the geothermal well to the Grantee's Parcel. Grantors further grant to Grantee an easement upon the Grantor's Parcel from the geothermal well in a Westerly direction parallel with the Northerly boundary of the Grantor's Parcel along the distribution pipeline as it is now situated to the Grantee's Parcel for the purpose of ingress and egress to maintain the geothermal well and the distribution pipeline and all of the appurtenances and attachments thereto.

2. **Reservation of Rights in Grantors.** Grantors reserve the right to receive and use water from the geothermal well for the use of the dwelling house located upon the Grantor's Parcel and retain

1. GRANT AND EASEMENT

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that portion of the distribution pipeline that services the dwelling house on the Grantor's Parcel.

3. **Maintenance, Repair and Upkeep.** Grantee shall pay 50% of the cost of the electrical power, maintenance, repair, and upkeep of the geothermal well, pump and distribution lines. All charges for these costs shall be paid first by the Grantors and reimbursed by the Grantee to the Grantors. In the event Grantee fails to pay any charge within 20 days of presentation of a written invoice evidencing payment by the Grantors of said costs, than the Grantee shall be deemed to be in default of this Agreement.

4. **Waiver of Damages for Failure.** In the event the geothermal well, pump or distribution lines fail for any reason, except for the intentional misconduct of one of the parties hereto, each party hereto waives any rights that they may have to claim damages for such failure as against the other party.

5. **Intervening Third Parties.** In the event the geothermal resource is claimed by any governmental agency and the rights to the geothermal water are taken from the parties by such governmental agency or in the event the distribution pipelines which provide the geothermal water to the Grantee's Parcel encroach upon any third parties property and such third party demands the removal of the distribution pipelines, than this Agreement shall be null and void. Upon this Agreement becoming null and void, all rights and easements granted herein shall revert to the Grantors and all duties imposed upon the Grantee for maintenance, repair and upkeep shall terminated. Upon the happening of any event mentioned in this paragraph, which would render this Agreement null and void, Grantors may demand that Grantee execute the necessary documents to clear the title to the Grantor's Parcel. In the event the Grantee fails to comply with the request of the Grantors within 20 days the Grantee shall be deemed to be in default of this Agreement.

6. **Covenant to Run with the Land.** This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors, and assigns. This Grant and Easement will run with the land for the benefit of Grantee's Parcel and for the benefit of the successors and assigns of the Grantee. This Agreement may be amended only by an instrument in writing executed by all the parties.

7. **Remedies.** This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon. In the event of a breach of this Agreement or a if default occurs under any of the terms hereof, the injured party shall be entitled to all of the remedies available under the laws of the state of Oregon. In addition to any other remedies a party may have the remedy of specific performance and in the event of a default of this Agreement, the injured party may request the court or the arbitrator to terminated this Agreement.

8. **Attorney Fees.** In the event suit or action is brought, or

an arbitration proceeding is initiated, to enforce or interpret any of the provisions of this Agreement or which is based thereon, the prevailing party shall be entitled to reasonable attorney fees in connection therewith. The determination of who is the prevailing party and the amount of reasonable attorney's fees to be paid to the prevailing party shall be decided by the arbitrators with respect to attorney fees incurred prior to and during the arbitration proceedings and by the court or courts, including any appellate court, in which such matter is tried, heard, or decided, including the court which hears any exceptions made to an arbitration award submitted to it for confirmation as a judgment with respect to attorney fees incurred in such confirmation proceedings.

9. **Arbitration.** Each party, at such party's option, shall have the right to require that any claim, controversy, or dispute between the parties, including but not limited to those arising out of or relating to the Agreement, and including those based on or arising from any statute, constitution, regulation, ordinance, rule or any alleged tort, be determined by arbitration in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc., or the then effective commercial arbitration rules of the American Arbitration Association, whichever organization is selected by the party who first initiates arbitration by filing a claim in accordance with the filing rules of the organization selected, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. If litigation has been commenced in court by either party with respect to a dispute in hope that a default judgment could be obtained:

a) the party who is the defendant or respondent in such litigation shall be deemed to have waived its option to arbitrate said dispute if such party files a general appearance in the litigation prior to filing a claim in arbitration in the manner specified above; and

b) The plaintiff or petitioner in such litigation will be deemed to have waived its right to arbitrate said dispute if such party fails to file a claim for arbitration in the manner specified above within sixty days after a general appearance in the litigation has been filed by the party who is the defendant or respondent in the litigation.

If either party properly exercises its option to arbitrate, arbitration of such dispute shall be mandatory and any pending litigation shall be stayed.

10. **Waiver.** A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall

3. GRANT AND EASEMENT

any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

11. **No Third Party Beneficiary.** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.

GRANTORS:

Thomas A. Fillmore
Thomas A. Fillmore

June E. Fillmore
June E. Fillmore

GRANTEE:

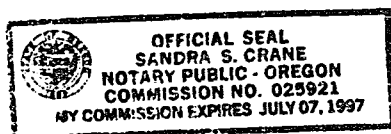
Lisa D. Brown
Lisa D. Brown

STATE OF OREGON)

) ss

County of Klamath)

Personally appeared the above-named Thomas A. Fillmore and June E. Fillmore, husband and wife, and acknowledged the foregoing instrument to be their voluntary act. Before me:



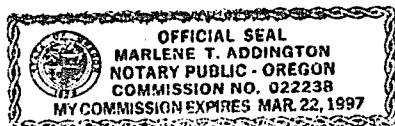
Sandra S. Crane
Notary Public for Oregon
My Commission expires: 7-7-97

STATE OF OREGON)

) ss.

County of Klamath)

Personally appeared the above-named Lisa D. Brown and acknowledged the foregoing instrument to be her voluntary act.



Marlene T. Addington
Notary Public for Oregon
My Commission expires: 3-22-97

STATE OF OREGON,

ss.

County of Klamath

Filed for record at request of:

4. GRANT AND EASEMENT

Brandsness & Brandsness
on this 5th day of Aug. A.D. 19 93
at 3:12 o'clock P.M. and duly recorded
in Vol. M93 of Deeds Page 19414
Evelyn Biehn County Clerk
By [Signature] Deputy.

Fec. \$45.00