

This agreement is made and entered into this 8<sup>th</sup> day of Aug, 1993 by and between Keith E. McClung and Beverly J. McClung (hereinafter referred to as "Grantor") and Bennett G. Brown and Janice I. Brown (hereinafter referred to as "Grantee") based on the following facts, circumstances and understandings of the parties, all of which they acknowledge to be true:

1. Grantor and Grantee are the owners of contiguous parcels of real property located in the unincorporated area of the County of Klamath, State of Oregon. Grantor is the owner of the parcel of property legally described in Exhibit "A" attached hereto, and Grantee is the owner of the parcel described in Exhibit "B" attached hereto. Hereinafter the property described in Exhibit "B" is referred to as "Parcel B".

2. There is currently existing on Parcel A, a water well which is functional and which the parties believe will supply sufficient water for domestic use for one residential dwelling on each of the parcels and irrigation for lawn, trees, plants and shrubbery on each of the parcels.

3. The parties are desirous of entering into an agreement providing for the perpetual use by the owners of Parcel A and Parcel B of the water supplied by the well, and for sharing the costs associated with the improvement, maintenance and operation of the well. Both parties acknowledge that it is to their mutual benefit to enter into this agreement.

#### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants hereinafter set forth, and the conveyance of easements and the grant of water rights provided herein, the parties agree as follows:

1. Grantor hereby grants to Grantee a license to use the well and share in the production of the water from the well. The parties agree that such license is coupled with an interest so as to make the license irrevocable, except as otherwise limited in term by the present laws of the State of Oregon. In the event of any such law imposed limitation, the license shall be for the maximum term allowed under the laws of the State of Oregon, and shall be automatically renewed at the end of the initial term (and any successive term), without the requirement of any notice or action on the part of Grantee, for the maximum period allowed by state law.

2. Grantor hereby grants and conveys to Grantee a non-exclusive easement appurtenant to Parcel B over, under and upon Parcel A for the installation, maintenance and servicing of pipelines, pumps, valves, electrical equipment and lines, and any other devices, materials or equipment necessary for Grantee to share in the production from the well, which easement is specifically described below. In addition, Grantor hereby grants and conveys to Grantee and easement in gross appurtenant to Parcel B over and upon so much of the other land of Parcel A for temporary ingress and egress and convenient location of equipment, supplies and materials necessary or convenient to install, maintain and service facilities for the owner of Parcel B to share in the use of the water produced from the well.

An easement five feet in width, the center line of which is perpendicular to the east line of Parcel A, with the point of beginning located on said east line, thence in a westerly direction \_\_\_\_\_ feet more or less and terminating at the location of the well.

3. The cost for maintenance and repair of the well, including, but not limited to, the well casing, the well pump, filters, valves, pipes, and other accessory equipment necessary for the pumping of the well shall be shared equally by Grantor and Grantee. Provided, however, that if only one party is using the well, and the other party has not yet installed the necessary equipment (piping, valves, pump, holding tank, etc.) to withdraw water from the well for that party's use, then the party using the well shall be solely responsible for all such maintenance and repair costs, as well as the cost of pumping the well.

4. Each party shall be solely responsible for the cost of installation, and the cost of maintenance and repair of any and all facilities and equipment necessary for supplying water to that party's property. The parties agree that this paragraph applies only to the facilities and equipment necessary for that party's beneficial use of the well separate from the facilities and equipment necessary for the other party's beneficial use of the well, and does not include the equipment and facilities necessary for extraction of water from the well up to the place where a party has diverted water for that party's separate use. Any costs of pumping the well to such diversion point shall be shared equally by the parties. Grantee shall be solely responsible for the cost to repair any damage caused by Grantor's property as a result of Grantee's entry on Parcel A to install, maintain and repair the facilities installed by Grantee for Grantee's use of the well.

5. Grantor and Grantees mutually agree and covenant with the other party that their use of the production from the well shall be only for domestic use of one single family dwelling including spas and swimming pool on each of the parcels and for irrigation purposes for plants, lawns and shrubbery on each of their respective parcels. The parties hereto further agree that this agreement is exclusive between the parties hereto, and neither shall enter into any agreement, nor shall any party consent to nor allow any proceeding or action that would give any third party any interest whatsoever in the well and the production therefrom without the prior express written consent of the other party having first been obtained.

6. In the event that the production of the water from the well becomes insufficient to serve both parcels, the parties agree that they will equally share the expense to make the necessary improvements to the well, including, but not limited to the expense of enlarging the well or extending the depth of the well, so that each party can continue to enjoy the water produced from the well. The parties agree that insufficient production shall be determined by the water actually produced from the well, and if either parcel is receiving an insufficient supply of water because of the inadequacy or lack of maintenance of the facilities (pipelines, valves, pumps, holding tank, etc.) for delivery of water to the parcel, no improvements to the well shall be required. The intent of the parties hereto is that both parties shall install and maintain adequate facilities for delivery of water to their respective parcels, and neither party shall be able to penalize the other party if the party fails to install and maintain adequate facilities.

7. Notwithstanding any other provisions of this agreement, either party may, upon giving the other party at least sixty (60) days prior written notice, terminate and abandon that party's interest in the well and the production therefrom. If notice is given by Grantee, the license and grant of easement provided herein shall terminate as of the date specified in the notice, and Grantee shall forthwith execute and deliver to Grantor any releases or other documents necessary to terminate the license and easement granted herein. If the notice is given by Grantor, Grantor's interest in the well and the production therefrom shall terminate as of the date specified in the notice, and Grantor shall forthwith execute and deliver to Grantee any releases, conveyances and other documents necessary to vest in Grantee the full ownership of the well and the accessory facilities and equipment necessary to pump the well and utilize the production therefrom. In the latter case, the easements granted to Grantee under paragraph 2 of this agreement shall include the right for ingress and egress and convenient location of equipment, materials and supplies over and upon Parcel A for improvement of the well.

8. In the event that an action is commenced by either party to enforce or construe any material provision of this agreement, or because of a claim of breach or default by the other party of any material obligation required of the other party under the terms of this agreement, the prevailing party shall be entitled to recover from the other party his or her costs and disbursements, including reasonable attorney's fees, incurred in prosecuting or defending against such action, in addition to any other relief granted by the court.

9. This agreement constitutes the entire agreement between the parties hereto and any oral or written agreement previously made between the parties regarding the subject matter of this agreement shall be conclusively deemed merged into this agreement. Likewise, no agreement made by the parties contemporaneously with their execution of this agreement shall be of any force or effect unless set out in writing and made a part of this agreement. Any amendment to this agreement shall be in writing and shall be enforceable only if signed by the party to be charged with the obligation thereof. Any waiver of any provision of this agreement shall be of no force and effect unless set out in writing and executed by the parties hereto, and no such waiver shall be deemed to be a continuing waiver of any provision of this agreement, unless expressly provided in such signed waiver.

10. In the event that any provision of this agreement is determined by a court of competent jurisdiction to be unenforceable, that event shall not effect the remaining provisions of this agreement which shall remain in full force and effect. In addition, if the court can give the unenforceable provision a limited construction so as to comply with the present laws of the state of Oregon, and such construction is consistent with the intent of the parties as expressed herein, such limited construction shall be given to the unenforceable provision so as to make it enforceable.

11. This agreement shall insure to the benefit of, and be binding upon, the parties hereto and their respective heirs, transferees, assigns, successors, and executors, administrators and personal representative. The easements granted herein shall run with the land, and shall continue to benefit Parcel B and burden Parcel A unless terminated in the manner provided herein.