

11-14-94A10:56 RCVD

WATER WAY EASEMENT  
AND  
WELL AGREEMENT

THIS AGREEMENT is made this 9th day of November, 1994, and is by and between Raymond E. and Stacy M. Osborn, hereinafter called "Osborn", and Keith and Beverly McClung, hereinafter called "McClung";

RECITALS

A. Keith and Beverly McClung are the present owners of the following described real property located in Klamath Falls, Oregon, hereinafter referred to as the "McClung Property":

SEE ATTACHED EXHIBIT "A"

B. Raymond E. and Stacy M. Osborn are purchasing the following described real property located in Klamath Falls, Oregon, hereinafter referred to as the "Osborn Property":

SEE ATTACHED EXHIBIT "A"

C. McClung and Osborn desire to enter into an agreement to allow for the use and maintenance of the well pump, pipes and casing, as well as to enter into an agreement granting a reciprocal easement over and across the properties to allow access to the water from said well and to perform maintenance upon the pump, pipes and casings thereof.

## AGREEMENT

The parties agree as follows:

1. For and in consideration of the reciprocal covenants contained herein, McClung grants to Osborn and Osborn grants to McClung the use of water from that certain well generally located on the boundary line dividing the aforementioned properties.
2. McClung grants to Osborn and Osborn grants to McClung an easement to appropriate water from the well hereinabove described.
3. McClung grants to Osborn and Osborn grants to McClung the right of reasonable ingress and egress upon each others property to use and maintain the well, pump, pipings, and casings as they are now situated.
4. 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 McClung and Osborn.
5. 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 the equipment necessary for that 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.
6. The parties 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.
7. 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 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,

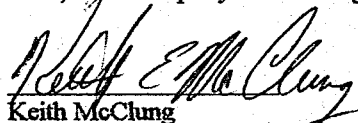
pumps, holding tank, etc.) for delivery of water to the parcel, no improvements to the well shall be required. The intent of the parties hereto is that both parties shall install and maintain adequate facilities for delivery of water to their respective parcels, and neither party shall be able to penalize the other party if the other party fails to install and maintain adequate facilities.

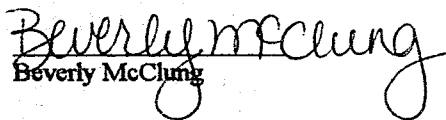
8. In the event that an action is commenced by either party to enforce or construe any material provision of this agreement, or because of a claim of breach or default by the other party of any material obligation required of the other party under the terms of this agreement, the prevailing party shall 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.

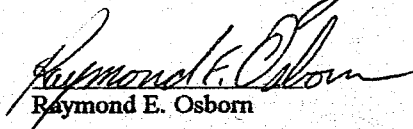
9. This agreement shall insure to the benefit of, and be binding upon, the parties hereto and their respective heirs, transferees, assigns, successors, and executors, administrators and personal representative. The easements granted herein shall run with the land.

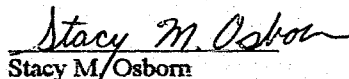
10. In the event either party fails to pay their proportionate share of costs within 30 days written notice, the party not in default may file a lien upon the real property, the party not in default may file a lien upon the real property of the party in default by filing a "Notice of Lien" under this agreement with the County Clerk of Klamath County, Oregon. The party not in default may foreclose the lien as provided by ORS Chapter 88 and shall be entitled to attorney fees in such foreclosure.

In witness hereof, each party has executed this agreement as of the date hereinbefore set forth, and each party acknowledges that such execution is his or her free act and deed.

  
Keith McClung

  
Beverly McClung

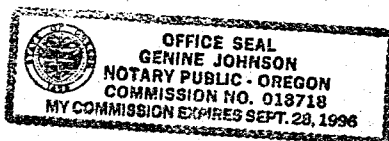
  
Raymond E. Osborn

  
Stacy M. Osborn

STATE OF OREGON        )  
                                   : ss.  
 County of Klamath        )

Personally appeared the above named Keith McClung and Beverly McClung and acknowledged that the foregoing instrument to be their free act and deed.

DATED before me this 9th day of November, 1994.



*Genine Johnson*  
 NOTARY PUBLIC FOR OREGON  
 My Commission Expires: 9/28/96

STATE OF OREGON        )  
                                   : ss.  
 County of Klamath        )

Personally appeared the above named Raymond E. Osborn and Stacy M. Osborn and acknowledged that the foregoing instrument to be their free act and deed.

DATED before me this 9th day of November, 1994.



*Genine Johnson*  
 NOTARY PUBLIC FOR OREGON  
 My Commission Expires: 9/28/96

## EXHIBIT "A"

## MCCLUNGS PROPERTY BEING DESCRIBED AS FOLLOWS:

Parcel 3 of Partition No. 11-93, filed November 17, 1993 and being a portion of Tract 19 of JUNCTION ACRES, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

## OSBORN'S PROPERTY BEING DESCRIBED AS FOLLOWS:

Parcel 1 of Partition No. 11-93, filed November 17, 1993 and being a portion of Tract 19 of JUNCTION ACRES, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Company the 14th day  
of November A.D., 19 94 at 10:56 o'clock A. M., and duly recorded in Vol. M94  
of Deeds on Page 34855

FEE \$50.00

Evelyn Biehn County Clerk  
By [Signature] [Signature]