

## WELL AGREEMENT

DATE: May 5, 1995.

GRANTOR: Robert James McElley and Elizabeth Irene McElley,  
husband and wife  
8950 Booth Road  
Klamath Falls, Oregon 97603

GRANTEE: Bernard L. Simonsen and Rhea Ellen Simonsen,  
husband and wife  
9390 Highway 140 East  
Klamath Falls, Oregon 97601

## Recitals:

A. Grantor is the owner of a parcel of real property situated in Klamath County, Oregon described as:

Parcel 2 of Land Partition 65-93 situated in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7, Township 39 South, Range 10 East of the Willamette Meridian, in the County of Klamath, State of Oregon (the "Grantor's Parcel").

upon which there is a domestic water well and pumps which have provided water to the property of the Grantor and adjoining properties prior to the partition of the property.

B. The Grantee is the owner of the following parcels of real property situated in Klamath County, Oregon:

Parcel 1 of Land Partition 65-93 situated in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7, Township 39 South, Range 10 East of the Willamette Meridian, in the County of Klamath, State of Oregon and Parcel 3 of Land Partition 65-93 situated in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7, Township 39 South, Range 10 East of the Willamette Meridian, in the County of Klamath, State of Oregon (the "Grantee's Parcel").

C. Grantor and Grantee desire to enter into an agreement for the use of the well under the following terms and conditions:

## Agreement:

1. **Ownership.** At all times during the term of this Agreement, the Grantor shall be the owner of the well and the related pumps and equipment. The Grantor shall have exclusive control over the operation and maintenance of the well, pumps and equipment. The Grantor shall bear the cost of the cost of energy to operate the pumps. The Grantor shall maintain and repair the well, pumps and equipment. The Grantor shall maintain the water lines

that are upon the Grantors Parcel.

2. **Obligation of Grantor.** Grantor shall provide domestic water to the North line of the Grantor's Parcel in the existing pipeline for the use and benefit of the dwelling house located on Parcel 3 of Land Partition 65-93. Grantor shall provide water to the South line of Grantor's Parcel to supply water to a stock tank located on Parcel 1 of Land Partition 65-93. Grantee shall install the water line from the well to the South line of Grantor's Parcel at no expense to the Grantor. Grantor expressly grants to Grantee permission to enter upon the Grantor's Parcel for such purpose. The Grantor shall be the owner of the water line so installed after its installation and shall maintain the water line as a part of this agreement.

3. **Obligation of Grantee.** Upon execution of this Agreement, the Grantee shall pay to the Grantor the sum of \$120.00 for the water to be provided to the Grantee by the Grantor for the period of June 1, 1995 to May 31, 1996. On or before each June 1 thereafter, Grantee shall pay such annual fee, however, in each succeeding year after the initial year the fee shall be increased by \$10.00 per year. In the event the Grantee fails or refuses to pay the annual fee, the Grantor may terminate this Agreement after giving Grantee 30 days written notice of such default and upon the failure of the Grantee to cure said default during such 30 day period. Upon the termination of this agreement, the Grantor may cease providing water to the Grantee and the Grantor shall have no further obligation under this Agreement.

4. **Quality and Quantity of Water.** The Grantor shall deliver to the Grantee water of the same quality and quantity as Grantor provides to Grantor's dwelling upon Grantor's Parcel. Grantor shall not be liable to Grantee for the quality of the water or the quantity of the water delivered to the Grantee as long as the quality and quantity are equal to or better than the quality and quantity delivered by the Grantor to their own dwelling.

5. **Binding Effect.** This Agreement shall bind and inure to each of said parcels of land and be appurtenant thereto and run therewith. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors, and assigns.

6. **Amendments.** This Agreement may be amended only by an instrument in writing executed by all the parties.

7. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

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 arbitrator(s) 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.** Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, shall be resolved by arbitration in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc. or the American Arbitration Association, whichever organization is selected by the party which 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.

In Witness the parties have executed this Agreement on the day and year first above.

GRANTOR:

GRANTEE:

Robert James McElley  
Robert James McElley

Bernard L. Simonsen  
Bernard L. Simonsen

Elizabeth Irene McElley  
Elizabeth Irene McElley

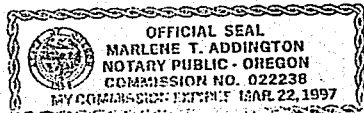
Rhea Ellen Simonsen  
Rhea Ellen Simonsen

STATE OF OREGON )

) ss. 5th May 1995

County of Klamath )

Personally appeared Robert James McElley and Elizabeth Irene McElley, and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

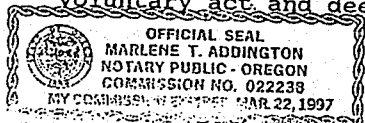


Marlene T. Addington  
Notary Public for Oregon  
My Commission expires: 3-22-97

12861

STATE OF OREGON        )  
County of Klamath        ) ss. 5th May 1995

Personally appeared Bernard L. Simonsen and Rhea Ellen Simonsen, and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:



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

AFTER RECORDING RETURN TO:  
Bernard & Rhea Simonsen  
9390 Highway 140 East  
Klamath Falls, OR 97601

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title co the 17th day  
of May A.D., 19 95 at 3:37 o'clock P M., and duly recorded in Vol. M95  
of Deeds on Page 12858

FEE \$45.00

By Bernetha G. Lasch County Clerk