

**WELL AGREEMENT & EASEMENT**

THIS AGREEMENT is made this 31 day of May, 1995, by and between Gordon E. Davis and Shirley A. Davis, as tenants by the entirety, hereinafter called "Davis", and James F. Mitchell and Eileen S. Mitchell, hereinafter called "Mitchell";

**RECITALS**

A. Davis are the present owners of the following described real property located in Klamath County, Oregon, hereinafter referred to as the "Davis Property":

Lot 3 in Block 1 of Midland Hills Estates, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

B. Mitchell owns the following described real property located in Klamath County, Oregon, hereinafter referred to as the "Mitchell Property":

Lot 2 in Block 1, Midland Hills Estates.

C. Davis and Mitchell desire to enter into an agreement to allow for the joint use and maintenance by the parties of a water well, pump, pipes, casings, pump house and all related equipment, as well as to enter into an agreement granting an easement over and across both properties to allow access to the water from said well and to perform maintenance upon the pump, pipes, casings and related equipment.

**AGREEMENT**

The parties agree as follows:

1. For and in consideration of the reciprocal covenants contained herein, Davis grants to Mitchell and Mitchell grants to Davis the use of water from that certain well generally located on

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the property line between both parcels, approximately 230 feet east of Horizon Street.

2. Davis grants to Mitchell an easement across the Davis property to appropriate water from the well above described. Mitchell grants to Davis an easement across the Mitchell property to appropriate water from the well above described.
3. Davis grants to Mitchell the right of ingress and egress to use and maintain the well, pump, pipings, and casings as they are now situated. Mitchell grants to Davis the right of ingress and egress to use and maintain the well, pump, pipings, and casings as they are now situated.
4. The cost of 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 between the parties. All equipment purchased with joint funds will be owned by Mitchell and Davis as tenants in common.
5. Electricity to the well system will be furnished by Davis. Mitchell will pay Davis \$7.00 per month by the 5th of each month commencing July 5, 1995. This payment shall be reviewed and adjusted regularly, based upon any change in the equipment connected to the well system using electricity and/or any change in the kilowatt charges made by the company providing electricity to Davis. Mitchell agrees to pay such future charges, as well.
6. 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 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.
7. The parties mutually agree and covenant that their use of the production from the well shall be for domestic use and irrigation. 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.

8. 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 other party fails to install and maintain adequate facilities.
9. 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.
10. This agreement shall insure to the benefit of, and be bind upon, the parties hereto and their respective heirs, transferees, assigns, successors, administrators and personal representative. The easements and covenants granted herein shall run with and be appurtenant to both parcels of land.

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.

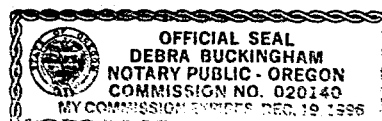
Gordon E. Davis  
GORDON E. DAVIS

James F. Mitchell  
JAMES F. MITCHELL

Shirley A. Davis  
SHIRLEY A. DAVIS

Eileen S. Mitchell  
EILEEN S. MITCHELL

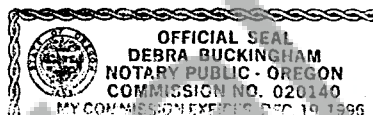
STATE OF OREGON )  
County of Klamath ) :ss



On this 31<sup>st</sup> day of May, 1995, before me personally appeared GORDON E. DAVIS and acknowledged the foregoing instrument to be his voluntary act and deed.

*Debra Buckingham*  
Notary Public for Oregon  
My commission expires: 12-19-96

STATE OF OREGON )  
County of Klamath ) :ss

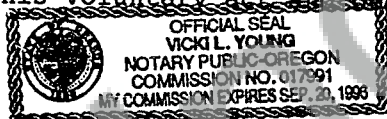


On this 31<sup>st</sup> day of May, 1995, before me personally appeared SHIRLEY A. DAVIS and acknowledged the foregoing instrument to be her voluntary act and deed.

*Debra Buckingham*  
Notary Public for Oregon  
My commission expires: 12-19-96

STATE OF OREGON )  
County of Klamath ) :ss

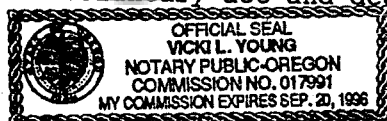
On this 30 day of May, 1995, before me personally appeared JAMES F. MITCHELL and acknowledged the foregoing instrument to be his voluntary act and deed.



*Vicki L. Young*  
Notary Public for Oregon  
My commission expires: 9-20-96

STATE OF OREGON )  
County of Klamath ) :ss

On this 30 day of May, 1995, before me personally appeared EILEEN S. MITCHELL and acknowledged the foregoing instrument to be her voluntary act and deed.



*Vicki L. Young*  
Notary Public for Oregon  
My commission expires: 9-20-96

AFTER RECORDING, RETURN TO:  
James R. Uerlings  
110 N. 6th St.  
Klamath Falls, OR 97601

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of James Uerlings the 6th day  
of June A.D., 19 95 at 10:40 o'clock A M., and duly recorded in Vol. M95  
of Deeds on Page 14853

FEE \$45.00

By *Bernetha G. Letsch*  
Bernetha G. Letsch, County Clerk