

ATE 01044828 + 4549  
WELL AGREEMENT AND PROPERTY RESTRICTIONS

This Agreement made by Robert S. Stockton and Elizabeth A. Stockton on this 25<sup>th</sup> day of October, 1996.

W I T N E S S E T H:

WHEREAS, Robert S. Stockton and Elizabeth A. Stockton are the owner of Lots 18, 19, 20 and 21, Block 18, INDUSTRIAL ADDITION TO THE CITY OF KLAMATH FALLS, Klamath County, Oregon; and

WHEREAS, Robert S. Stockton and Elizabeth A. Stockton have applied to Klamath Falls Planning Department and have been granted a property line adjustment 1-PL-96; and

WHEREAS, there is currently existing a geothermal well located on Lot 20, Block 18, INDUSTRIAL ADDITION TO THE CITY OF KLAMATH FALLS, which well serves both Parcel A and Parcel B of property line adjustment 1-PL-96; and

WHEREAS, the City of Klamath Falls requires, as a condition of granting the property line adjustment, that Parcel A of the property line adjustment be granted an easement to the alley adjacent to Lots 18, 19, 20 and 21; and

WHEREAS, Stocktons' wish to insure the use of the geothermal well by the current owners and subsequent owners of Parcel A and Parcel B;

NOW THEREFORE, it is mutually agreed as follows:

1. Conveyance. Robert S. Stockton and Elizabeth A. Stockton as owners of Parcel A do hereby give and grant unto Robert S. Stockton and Elizabeth A. Stockton as owners of Parcel B and their successors and assigns for the benefit of Parcel B a perpetual undivided  $\frac{1}{4}$  interest in a geothermal well located on Parcel A, together with a 5 foot easement for the pipe connected to the geothermal well to Parcel B. The easement shall be perpendicular to the easterly boundary of Parcel A for the purpose of maintaining, repairing and inspecting the pipe from the well on Parcel A to Parcel B. The owners of Parcel A further grant unto the owners of Parcel B an irrevocable easement for access to the well as is reasonably necessary for inspection and maintenance of the well.

2. Maintenance. The well, casing and connection pipe and down hole heat exchanger shall be maintained at the least reasonable cost to the owners of Parcel A and Parcel B in the following manner:

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1           2(a). In the event that Parcel A and Parcel B are not owned by the same  
2 party, should any apparent malfunction or physical deficiency in the well or its  
3 components become apparent to either of the owners, said difficulty shall be  
4 corrected, repaired and replaced as mutually agreed to by the parties. Costs of  
5 such work shall be borne equally by the parties. Should any malfunction,  
6 apparent malfunction or physical deficiency of the well or any of its components  
7 become apparent to either of the parties, and if the other party will not agree  
8 to corrective action and costs as described in the above paragraph, the party  
9 alleging the malfunction or apparent malfunction of the well or its component,  
10 may notify the other party by certified mail, return receipt requested, of the  
11 malfunction. Within 5 days after the date of receipt or the date of refusal to  
12 receive notice, the first party shall engage the services and advice and  
13 direction of either a mechanic or contractor considered by first party to be  
14 competent to drill, ream, case, provide installation of down hole heat exchangers  
15 in geothermal wells or otherwise capable of dealing with the problems of  
16 residential geothermal heat source installation, or a registered mechanical  
17 engineer whom first party considers qualified to deal with the problem of  
18 residential geothermal heat installations.

19           2(b). If either party fails or neglects to select or engage with a  
20 consultant within 5 days after the delivery of the notice, the other party shall  
21 notify the refusing party that he is assuming the prerogative and responsibility  
22 of repairing the system. He may then proceed to have the system repaired as  
23 necessary and the cost shall be shared equally by the owners of Parcel A and the  
24 owners of Parcel B.

25           2(c). The intent of this Agreement is to insure that the owners of both  
26 Parcel A and Parcel B shall have equal access to the hot water produced by the  
27 well and equal responsibility and opportunity to maintain the geothermal well.  
28 A copy of this geothermal well use agreement shall be recorded with the Klamath  
29 County Clerk and any transfer of all or a portion of the property shall be  
30 subject to the provisions thereof.

31  
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1 It is mutually covenanted and agreed by the owners of Parcel A and Parcel  
 2 B, or their successors, that in the event the owner of either of the parcels  
 3 shall at any time hereinafter institute a suit, action or proceeding to enforce  
 4 the covenants and conditions herein contained, or for damages for the breach of  
 5 the same, that the Court, including an Appellate Court, if an appeal is taken,  
 6 may award to the prevailing party in such suit, action or proceeding, such sum  
 7  
 8 as may be deemed reasonable as prevailing party attorney's fees, in addition to  
 9 the actual costs and disbursements provided by law.

10 3. Robert S. Stockton and Elizabeth A. Stockton as owners of Parcel B,  
 11 hereby grant and convey to Robert S. Stockton and Elizabeth A. Stockton as owners  
 12 of Parcel A, or their successors, a 15 feet easement across Parcel B for access  
 13 to the alley located between Martin Street and East Main Street along the  
 14 Westerly boundary of Lot 21, Block 18, INDUSTRIAL ADDITION TO THE CITY OF KLAMATH  
 15 FALLS.

16 IN WITNESS WHEREOF, the parties have executed this agreement on the day and  
 17 year first herein mentioned.

18  
 19 Dated: 10-29-96

Robert S. Stockton  
 Robert S. Stockton

20  
 21 Dated: 10-29-96

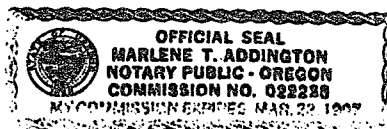
Elizabeth A. Stockton  
 Elizabeth A. Stockton

22  
 23 STATE OF OREGON )  
 24 ) SS  
 County of Klamath )

25 On this 29th day of October, 1996, personally appeared the above-named  
 26 Robert S. Stockton and Elizabeth A. Stockton, and acknowledged the foregoing  
 instrument to be their voluntary act and deed.

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

27  
 28  
 29 After Recording Return To:  
 30 Robert S. & Elizabeth A. Stockton



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WILLIAM L. SISEMORE  
 Attorney at Law

STATE OF OREGON: COUNTY OF KLAMATH: SS.

Filed for record at request of Aspen Title & Escrow the 29th day  
 of October A.D., 1996 at 3:40 o'clock P.M., and duly recorded in Vol. M96,  
 of Deeds on Page 34125.

FEE \$20.00

Bernetha G. Letsch County Clerk

By Marlene T. Addington