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AGREEMENT FOR EASEMENT AND JOINT WELL USE

THIS AGREEMENT, made the 29th day of September, 1997 by and between, William K. Kalita, hereinafter called the First Party, and Marsha McCabe, hereinafter called the Second Party:

WITNESSETH

WHEREAS: The First Party is the owner of the following described real estate in Klamath County, Oregon, to-wit:

Parcel No. 2 of Minor Land Partition No. 34-91 situated in the SE¼ of Section 35, Township 34 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon.

and is the owner if the well and water pump on said real property.

WHEREAS: The Second Party is the owner of the following described real estate in Klamath County, Oregon, to-wit:

Parcel No. 1 of Minor Land Partition No. 34-91 situated in the SE¼ of Section 35, Township 34 South, Range 7 East of the Williamette Meridian, Klamath County, Oregon.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the First Party agrees to grant, assign and set over to the Second Party a perpetual easement. The center line of said easement shall be considered to be situated at ground level directly above the middle of the width and running along the length of that portion of the existing waterline that connects said existing well to Second Party's property described as Parcel 1 above. Said easement shall be a total of fourteen feet wide with seven feet on each side of said center line running parallel with said center line and extending the length of that portion of said waterline that lies between said well and the north boundary line of Parcel 2. In addition, the easement shall extend seven feet in radius from the center of the width of said well measured at ground level.

The Second Party shall have the right of ingress and egress over said easement and the right to cut, trim and remove brush or other obstructions on or over said easement as needed for the purpose of repairing or replacing the waterline, well water pump and/or associated equipment or materials. The Second Party shall have the right to attach said waterline to a pressure tank on Second Party's adjacent Parcel 1, for the purpose of obtaining water from said well using the existing system.

Except as to the rights herein granted, the First Party shall have the full use and control of the above described real estate.

The Second Party hereby agrees to hold and save the First Party harmless from any and all claims of third parties arising from Second Party's use of the rights herein granted.

Said waterline serving Parcel 1 shall provide water to only one single-family type residence and shall not be used for industrial, commercial or irrigation purposes, except for a lawn and noncommercial garden.

First Party shall be responsible for First Party's share of the pumping costs. The Second Party shall be responsible for Secondary Party's share of the pumping costs. Second Party shall pay First Party once every three months Second Party's share of the pumping costs due and payable the first day of the month of each quarter of the year (every three months). Second Party's share of the pumping costs for each quarter of the year shall be determined by the actual cost of Second Party's share of said pumping costs if proof of the actual pumping costs of Second Party's share is available. If said proof is not available then Second Party's share of said pumping costs shall be due and payable as follows: Every three months for the first four quarters of the year beginning October 1, 1997 the Second Party shall pay the First Party $20.00 per quarter in advance of each quarter. The amount of money due and payable by the Second Party to the First Party every three months for the next succeeding four quarters shall be the total of the amount due and payable the previous four quarters multiplied by 1.03 and then that product shall be divided by four and then rounded up to the nearest penny, calculated as follows: [($80 x 1.03 = $82.40) divided by 4 = $20.60 due and payable per quarter].

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The dollar amount due and payable each quarter for each successive four quarters thereafter shall be determined by calculation per following formula: The total amount due and payable the previous four quarters added together, as figured for the prior year per this same formula, multiplied by 1.03. That product shall then be divided by four. The result shall be rounded up to the nearest penny.

In addition to said quarterly amount due and payable by Second Party to First Party, Second Party shall pay Second Party's share of the cost of any repair, maintenance and/or necessary replacement cost of said waterline, well pump, well equipment and well, due and payable within thirty days of receipt of proof of said incurred cost. First Party shall pay First Party's share of the cost of any repair, maintenance and/or necessary replacement cost of said waterline, well pump, well equipment and well, due and payable within thirty days of receipt of proof of said incurred cost. Unless mutually agreed otherwise, each Party shall pay one-half of the cost of any repair, maintenance and necessary replacement cost of said waterline, well pump, well equipment and well. If one Party pays the whole cost of any repair, maintenance and/or necessary replacement cost of said waterline, well pump, well equipment and well the other Party shall reimburse that Party one-half of said total cost within thirty days of receipt of proof of payment of said total cost.

Any monetary consideration agreed to be paid by the Second Party to the First Party or by the First Party to the Second Party, as stated in this herein easement and joint well use agreement, that is not paid within 10 days of the due date shall be considered late. A late payment penalty charge of a fifty cents per day shall then be due and payable. The total monetary amount of the late payment charge shall be figured as follows: The number of days beginning with and counting the day after the date payment was due plus the number of days till and including the date payment was received multiplied by fifty cents.

Neither party shall have the right to impair the other party's normal use of the water system except during short, pre-warned periods when making repairs, installations or for maintenance of the system.

This agreement shall bind and inure to the benefit of, as the circumstances may require, not only the immediate parties hereto but also their respective heirs, executors, administrators and successors in interest as well. Until terminated, this agreement for easement and joint well use shall run with the land that it pertains to and be appurtenant to the land.

Either party may terminate this agreement upon either party giving the other party sixty days prior written notice of intention to terminate the used of the well system and to disconnect the water line to said party's residence. Upon such termination the party terminating the use of the water system shall bear the cost of disconnection and shall record a quitclaim deed conveying said party's interest in this agreement for easement and joint well use to the other party. This agreement may also be terminated upon recording in Klamath County a written mutually agreed upon termination agreement signed by First Party and Second Party.

In any suit or action brought on this agreement, the losing party therein agrees to pay the prevailing party therein (1) the prevailing party's reasonable attorney's fees in such suit or action, to be fixed by the trail court, and (2) on appeal, if any, similar fees in the appellate court, to be fixed by the appellate court.

IN WITNESS WHEREOF, the parties hereto agree to this agreement for easement and joint well use as evidenced by each party's signature below.

Date: September 29, 1997 First Party: William K. Kalita
William K. Kalita

Date: ______________ Second Party: Marsha A. McCabe
Marsha McCabe

COUNTY OF KLAMATH
STATE OF OREGON

Signed before me this 29th day of September 1997, by William K. Kalita.

Peggy Idonas

OFFICIAL SEAL
PEGGY IDONAS
NOTARY PUBLIC - OREGON
COMMISSION NO. A 039566
MY COMMISSION EXPIRES DEC. 16, 1998

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State of Oregon

County of Klamath

October 1, 19 97

Personally appeared the above named Marsha A. Mc Cabe, and acknowledged the foregoing instrument to be her voluntary act and deed.

WITNESS My hand and official seal. (seal)

Marjorie A Stuart

Notary Public for Oregon
My Commission expires: 12-20-98

OFFICIAL SEAL
MARJORIE A. STUART
NOTARY PUBLIC-OREGON
COMMISSION NO. 040231
MY COMMISSION EXPIRES DEC. 20, 1998

After recording return to:

Marsha A. Mc Cabe
P.O. Box 25
Crater Lake, OR 97604

STATE OF OREGON: COUNTY OF KLAMATH : ss.

Filed for record at request of Amerititle the 6th day of October A.D., 19 97 at 3:39 o'clock P. M., and duly recorded in Vol. M97, of Deeds on Page 32936.

Bernetha G. Letsch, County Clerk

FEE $40.00 By Kathleen Ross