

WATER WAY EASEMENT
AND
WELL AGREEMENT

THIS AGREEMENT made by and between LARRY C. HEATON and PAMALA A. HEATON, KENNETH CLIFTON KNOWLES and JOAN KATHLEEN KNOWLES, RANDELL SOUDERS and CAROLYN SOUDERS, JAMES BURSELL and LUCILLE BURSELL, GAIL D. HILDRETH and DOUGLAS K. WHITSETT:

R E C I T A L S:

A. Lewis L. Hagelstein and Nona B. Hagelstein were the owners of a parcel of real property situated along Old Fort Road in Klamath County, Oregon, upon which was situated a well known as the "Plum Valley Well". Said well is located 820 feet North and 220 feet West from the Southeast corner of Section 29, Township 37 South, Range 9 E.W.M.

B. Lewis L. Hagelstein and Nona B. Hagelstein obtained a Certificate of Water Right from the State of Oregon to irrigate 259.9 acres from the Plum Valley Well, which Certificate of Water Right was recorded on November 21, 1969 in Volume M-69 at page 9764. Lewis L. Hagelstein and Nona B. Hagelstein obtained an additional Certificate of Water Right from the State of Oregon to irrigate an additional 65.4 acres from the Plum Valley Well, which Certificate of Water Right was recorded on June 29, 1979 in Volume M-79 on page 15344.

C. Lewis L. Hagelstein and Nona B. Hagelstein sold a portion of the real property owned by them to Winifred L. Emmich by Contract of Sale dated January 2, 1976 and recorded on the 22nd day of January, 1976 in Volume M-76 at page 1071, wherein Lewis L. Hagelstein and Nona B. Hagelstein made the following recital:

Irrigation. Purchasers agree to pay their pro-rata share of cost of the irrigation system of which they will have an undivided 1/2 interest, as long as they will Sellers their pro-rata share of the maintenance and operation costs of said 100 h.p. pump, pipe, ditches and reservoirs, and Sellers reserve 1/2 rights to same for Sellers and Sellers' successors.

D. Winifred L. Emmich sold a portion of the real property which she purchased from Lewis L. Hagelstein and Nona B. Hagelstein to Edward J. Pulaski

RETURN TO:

WILLIAM L. SISEMORE
Attorney at Law
540 Main Street
KLAMATH FALLS, ORE.
97601
541/882-7229
O.S.B. #701336

Water Way Easement and
Wells Agreement - Page 1

1 by Contract dated April 30, 1976, recorded in Volume M-76 at page 7349, wherein
2 Winifred L. Emmich made the following recital:

3 Irrigation. Purchaser agrees to pay his pro-rata share of cost of
4 the irrigation system of which he will have an undivided 1/4
5 interest, as long as he will pay Lewis L. Hagelstein or his
6 designees his pro-rata share of the maintenance and operation costs
7 of said 100 h.p. pump, pipe, ditches and reservoirs, and Lewis L.
8 Hagelstein and Nona B. Hagelstein reserve an undivided 1/2 interest
9 to same for Hagelsteins and Hagelsteins' successors, and a like
10 reservations of an undivided 1/4 interest is reserved for Seller or
11 her successors.

12 E. The parties to this Agreement have through various purchases acquired
13 title to the property which was the subject of the above described Agreements as
14 follows:

15 Larry C. Heaton and Pamala A. Heaton acquired an interest in the subject
16 property by deed dated August 26, 1980, and recorded on September 18, 1980, in
17 Volume M80, page 17744;

18 Kenneth Clifton Knowles and Joan Kathleen Knowles acquired an interest in
19 the subject property by deed dated September 11, 1985, and recorded on October
20 25, 1985, in Volume M85, page 17422;

21 Randell Souders and Carolyn Souders acquired an interest in the subject
22 property deed dated July 19, 1991, and recorded on July 23, 1991, in Volume M91,
23 page 14299;

24 James Bursell and Lucille Bursell acquired an interest in the subject
25 property by deed dated February 26, 1988, and recorded on March 9, 1988, in
26 Volume M88, page 3264;

27 Gail D. Hildreth acquired an interest in the subject property by deed dated
28 _____, 19____, and recorded on Dec 17, 1997, in Volume M
29 m97, page 40899;

30 Douglas K. Whitsett acquired an interest in the subject property by
31 contract of sale dated October 3, 1996, and recorded on January 7, 1997, in
32 Volume M97, page 433;

33 Larry C. Heaton and Pamala A. Heaton obtained a Certificate of Water Right
34 from the State of Oregon to irrigate 129.1 acres from the Plum Valley Well. The
35 Certificate of Water Right was recorded on October 17, 1997, in Volume M97, page
36 34120.

37 F. The parties and their predecessors in interest have developed and
38 maintained the well, pump, ditch and reservoir system which extends from the well
39 in a Northwesterly direction to include all of the lands subject to the
40 Certificate of Water Right.

41 G. Heaton, Knowles, Souders, Bursell, Hildreth and Whitsett are the owners

42 Water Way Easement and
Wells Agreement - Page 2

1 of all of the real property upon which the well, pump, ditches, reservoirs and
2 water rights are situated and they desire to enter into an agreement to allow for
3 the use and maintenance of the well, pump, ditches and reservoirs.

4 This Agreement replaces the Well Agreement dated October 28, 1985 and
5 recorded May 28, 1986, in Volume M86, page 9172, Deed Records of Klamath County,
6 Oregon and any other well agreements that may have been executed concerning the
7 above described properties, and the above described properties shall be subject
8 to the terms of this Agreement.

9 A G R E E M E N T

10 The parties agree as follows:

11 1. That each party will have an undivided interest in the well and pump
12 above described as follows:

13 Kenneth C. Knowles and Joan Kathleen Knowles as to an undivided 3/12
14 interest;

15 Randell Souders and Carolyn Souders as to an undivided 3/12 interest;

16 James Bursell and Lucille Bursell as to an undivided 3/12 interest;

17 Larry C. Heaton and Pamala A. Heaton as to an undivided 1/12 interest;

18 Gail D. Hildreth as to an undivided 1/12 interest;

19 Douglas K. Whitsett as to an undivided 1/12 interest.

20 2. Each party grants to the others an easement to appropriate water from
21 the well in the ditches and reservoirs as they are now situated, which are
22 located in Sections 18, 20 and 29 of Township 37 S., Range 9 EWM.

23 3. Each party grants to the others the right of ingress and egress to use
24 and maintain the well, pump, ditches and reservoirs as they are now situated.

25 4. Each party shall have the duty to maintain the ditches and reservoirs
26 upon their property. The costs of maintenance of the ditches and reservoirs
27 shall be shared and each party shall pay said costs as follows:

28 Kenneth C. Knowles and Joan Kathleen Knowles as to 3/12ths of the cost;

29 Randell Souders and Carolyn Souders as to 3/12ths of the cost;

30 James Bursell and Lucille Bursell as to 3/12ths of the cost;

31 Larry C. Heaton and Pamala A. Heaton as to 1/12th of the cost;

32
Water Way Easement and
Wells Agreement - Page 3

1 Gail D. Hildreth as to 1/12th of the cost;

2 Douglas K. Whitsett as to 1/12th of the cost.

3 The repair and maintenance of the ditches and reservoirs shall only be
4 done upon agreement of the parties who own at least one-half of the interest set
5 forth in this Agreement.

6 5. Each party shall pay the cost of the maintenance and operation of the
7 well and pump as follows:

8 Kenneth C. Knowles and Joan Kathleen Knowles as to 3/12ths of the cost;

9 Randell Souders and Carolyn Souders as to 3/12ths of the cost;

10 James Bursell and Lucille Bursell as to 3/12ths of the cost;

11 Larry C. Heaton and Pamala A. Heaton as to 1/12th of the cost;

12 Gail D. Hildreth as to 1/12th of the cost;

13 Douglas K. Whitsett as to 1/12th of the cost.

14 6. In the event any party to this Agreement fails to pay his proportionate
15 share of costs upon demand, any of the other parties may terminate the defaulting
16 party's right to use the water during the period of default and may file a lien
17 upon the real property of the defaulting party by filing a Notice of Lien under
18 this Agreement with the County Clerk of Klamath County, Oregon. Any non-
19 defaulting party may foreclose the lien as provided by ORS Chapter 88 and shall
20 be entitled to attorney fees in such foreclosure.

21 7. The rights created by this Agreement shall run with the land and in the
22 event any party sells any portion of the land subject to the above-mentioned well
23 or water rights, the purchasers or lien holders on the subject property, shall
24 be bound by this Agreement and shall be entitled to the benefits of the
25 Agreement.

26 8. No water shall be sold to any person who is not a party to this
27 Agreement without the prior unanimous written consent of all parties to this
28 Agreement.

29 ///

30 ///

31 ///

32 Water Way Easement and
Wells Agreement - Page 4

IN WITNESS WHEREOF the parties have set their hands and seals this 17th
 day of December, 1997.

HEATON

Larry C. Heaton
 Larry C. Heaton

Pamala A. Heaton
 Pamala A. Heaton

KNOWLES

Kenneth Clifton Knowles
 Kenneth Clifton Knowles

Joan Kathleen Knowles
 Joan Kathleen Knowles

BURSELL

James Bursell
 James Bursell

Lucille M. Bursell
 Lucille Bursell

WHITSETT

Douglas K. Whitsett
 Douglas K. Whitsett

HILDRETH

Gail D. Hildreth
 Gail D. Hildreth

SOUDERS

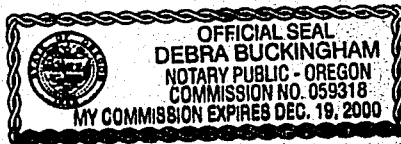
Randell Souders
 Randell Souders

Carolyn Souders
 Carolyn Souders

STATE OF OREGON)
) SS
 County of Klamath)

December 17th, 1997

Personally appeared the above named Larry C. Heaton and Pamala A. Heaton,
 and acknowledged the foregoing instrument to be their voluntary act and deed.
 Before me:

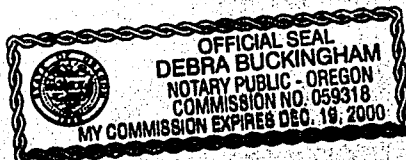


Debora Buckingham
 Notary Public for Oregon
 My Commission Expires: 12-19-2000

STATE OF OREGON)
) SS
 County of Klamath)

December 8, 1997

Personally appeared the above named Kenneth Clifton Knowles and Joan
 Kathleen Knowles, and acknowledged the foregoing instrument to be their voluntary
 act and deed. Before me:



Debora Buckingham
 Notary Public for Oregon
 My Commission Expires: 12/19/2000

Water Way Easement and
 Wells Agreement - Page 5

1 STATE OF OREGON)
2 County of Klamath) SS

December 5, 1997

3 Personally appeared the above named James Bursell and Lucille Bursell, and
4 acknowledged the foregoing instrument to be their voluntary act and deed. Before
me:

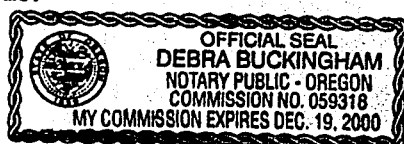


Jill M. O'Neil
Notary Public for Oregon
My Commission Expires: 10/10/99

8 STATE OF OREGON)
9 County of Klamath) SS

December 15, 1997

10 Personally appeared the above named Randell Souders and Carolyn Souders,
11 and acknowledged the foregoing instrument to be their voluntary act and deed.
Before me:

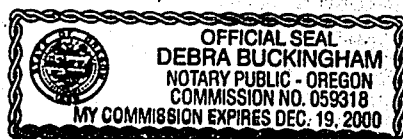


Debra B. Buckingham
Notary Public for Oregon
My Commission Expires: 12-19-2000

15 STATE OF OREGON)
16 County of Klamath) SS

December 17, 1997

17 Personally appeared the above named Douglas K. Whitsett, and acknowledged
18 the foregoing instrument to be his voluntary act and deed. Before me:

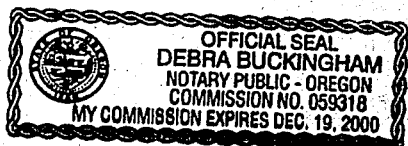


Debra B. Buckingham
Notary Public for Oregon
My Commission Expires: 12-19-2000

22 STATE OF OREGON)
23 County of Klamath) SS

December 17, 1997

24 Personally appeared the above named Gail D. Hildreth, and acknowledged the
25 foregoing instrument to be her voluntary act and deed. Before me:



Debra B. Buckingham
Notary Public for Oregon
My Commission Expires: 12-19-2000

STATE OF OREGON,
County of Klamath ss.

Filed for record at request of:

Klamath County Title

on this 17th day of December A.D., 1997
at 11:06 o'clock A.M. and duly recorded
in Vol. M97 of Deeds Page 40902

Bernetha G. Letsch, County Clerk

By Kathleen Ross
Fee, \$55.00 Deputy