

1999 SEP 23 AM 11:05

Vol M99 Page 37735

K54508

**WELL AGREEMENT & EASEMENT**

THIS INSTRUMENT is entered into this 21 day of September 1999, by and between Gary L. Guggenmos and Sally L. Guggenmos, husband and wife, hereinafter referred to as the "First Party" and Robert C. Rugh and Betty M. Rugh, husband and wife, hereinafter referred to as the "Second Party."

**RECITALS**

A. First party is the owner of the following described real property located in Klamath County, Oregon, hereinafter referred to as "Parcel 1."

Lot 3 Block 8 Track No. 1039, Yonna Wood, Unit #2, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.

B. Second party is the owner of the following described real property located in Klamath County, Oregon, hereinafter referred to as "Parcel 2."

Lot 5 Block 8 Track No. 1039, Yonna Wood, Unit #2, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.

C. The First Party has drilled a water well approximately 600 feet deep on Parcel 1, and has historically shared the costs and expenses of constructing and installing the well, casing, pump and motor with the adjoining property owner, Second Party.

D. First Party and Second Party desire to enter into a written agreement as to the future use, maintenance and repair of said well, casing, pump, motor, pump house and all related things commonly used by both parties for use of the well water. In addition, the parties desire to enter into an agreement granting mutual easements over and across each of their properties to

allow access to the water from said well and to perform maintenance and repair on the items described above.

E. The Parties desire this agreement to benefit and bind their future heirs, executors and assigns and to thus run with the transfer of the real property (Parcels 1 and 2) described above.

### AGREEMENT

For and in consideration of the reciprocal covenants and agreements contained herein and for other good and valuable consideration receipt of which is hereby acknowledged, Parties agree as follows:

1. First Party grants unto Second Party for the use and purpose of conveying water from the well described above, an easement over and across a strip of land 6 feet in width, the center line of such strip of land beginning at the well and extending generally in a southwesterly direction to Lot 5.
2. First Party grants unto Second Party the right to use the water from said well for the purposes as set forth herein and for no other purpose provided that Second Party complies with all of the covenants set forth herein.
3. First Party and Second Party hereby covenant with one another that they, their heirs, executors and assigns will share equally in the costs of repair and maintenance of the well, casing, pump, motor, pump house, filters, valves, pipes, generator, power service equipment and all related items needed for pumping water from the well.
4. Each party shall repair and maintain at their own expense the water line flowing from the well to the residence or other such location upon their lot where the well water is permitted to be used. Each party shall be solely responsible for the cost, installation, maintenance and repair of any and all facilities, parts and equipment necessary for supplying the water to that party's real property as described above.
5. Each Party covenants and agrees with the other that the water from the well shall be used for domestic purposes only, which shall include providing of water to the yard area immediately surrounding the residence located on each lot. Under no circumstances shall the water be used for irrigation of the pasture or for watering livestock or for any other business use.
6. First Party agrees to pay the power bill related to electrical service utilized by the well, pump and generator. Second Party agrees to pay directly to the Well Maintenance Account the

sum of Twenty Dollars (\$20) a month; \$10.00 as their contribution toward said power expense. and \$10.00 on behalf of Party 1 in exchange for power usage for well, pump and generator. Said sum shall be paid on or before the first of each month commencing on September 1, 1999 and on the first of each month thereafter. This payment shall be reviewed and adjusted regularly and no less frequently than on a yearly basis. Payment by Second Party shall be adjusted based upon any change in the electrical usage of the well and its related pump, generator and other similar equipment utilizing the electrical service and/or for any change in the charge per kilowatt made by such company providing electricity to First Party. Upon any change in the charges for kilowatt usage, First Party shall adjust Second Party's monthly payment on a pro rata basis and Second Party agrees to pay such future charges on the same basis as provided herein. This monthly payment will be deposited into an account, jointly controlled by the parties. Funds may be withdrawn from the account to pay expenses described in paragraph 3.

7. Each Party covenants and agrees that the water from the well will only be used for one residence (dwelling) located upon each lot. The Parties agree that the respective parcels of real property set forth above shall not be further subdivided by First or Second Party or any of their heirs, executors or assigns without the express prior written permission of the other Party.

8. The Parties mutually agree and covenant that their use of the water from the well shall be exclusively for the real property and the purposes described herein. Neither Party 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 water produced therefrom without the prior express written consent of the other Party having been first obtained.


9. 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 tanks, etc.) for delivery of water to the affected 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.

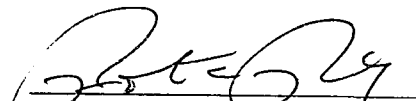
10. In the event that an action is commenced by either Party to enforce or construe any material provision of this agreement, or because of a claim of breach or default by the other party of any material obligation required of the other Party under the terms of this agreement, the prevailing Party shall 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, whether in trial court or on appeal.


11. 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.


12. This agreement replaces the agreements dated May, 1981 and recorded on May 29, 1981 at Volume M81, Page 9556 of the real property records of Klamath County, Oregon and agreement dated September 15, 1988 and recorded on September 20, 1988 at Volume M88, Page 15585 of the real property records of Klamath County, Oregon. Said Agreements are no further force and/or effect.

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.

  
Gary L. Guggenmos

  
Robert C. Rugh


  
Sally L. Guggenmos

  
Betty M. Rugh

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

On this 21 day of September, 1999, before me personally appeared GARY L. GUGGENMOS and acknowledged the foregoing instrument to be his voluntary act and deed.

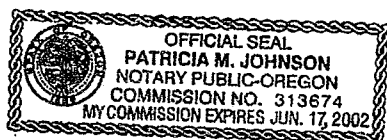


  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 6-17-2002

37799

STATE OF OREGON       )  
                                   ) ss.  
 County of Klamath       )

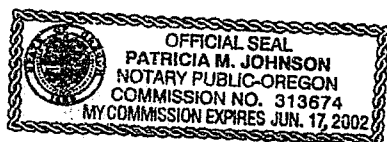
On this 21 day of September, 1999, before me personally appeared  
 SALLY L. GUGGENMOS and acknowledged the foregoing instrument to be his voluntary act  
 and deed.



Patricia M. Johnson  
 NOTARY PUBLIC FOR OREGON  
 My Commission Expires: 6-17-2002

STATE OF OREGON       )  
                                   ) ss.  
 County of Klamath       )

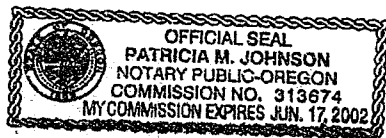
On this 21 day of September, 1999, before me personally appeared  
 ROBERT C. RUGH and acknowledged the foregoing instrument to be his voluntary act and  
 deed.



Patricia M. Johnson  
 NOTARY PUBLIC FOR OREGON  
 My Commission Expires: 6-17-2002

STATE OF OREGON       )  
                                   ) ss.  
 County of Klamath       )

On this 21 day of September, 1999, before me personally appeared  
 BETTY M. RUGH and acknowledged the foregoing instrument to be his voluntary act and deed.



Patricia M. Johnson  
 NOTARY PUBLIC FOR OREGON  
 My Commission Expires: 6-17-2002

AFTER RECORDING PLEASE RETURN TO:  
 James R. Uerlings  
 BOIVIN, UERLINGS & DIACONI, P.C.  
 110 North Sixth Street  
 Klamath Falls, OR 97601

State of Oregon, County of Klamath  
 Recorded 9/23/99, at 11:05 A m.  
 In Vol. M99 Page 37795  
Linda Smith,  
 County Clerk       Fee \$ 50.00

WELL AGREEMENT & EASEMENT

Page 5