

AGREEMENT AND LICENSE TO SUPPLY WELL
WATER FOR DOMESTIC PURPOSES

DATED: February 1, 2000
PARTIES: Kenneth Wilson and Karen Wilson,
Husband and wife, "Wilson"
P. O. Box 172
Chemult, Oregon 97731
AND: Roger G. and Karen A. Sutton,
Husband and wife, "Sutton"
P. O. Box 191
Chemult, Oregon 97731

RECITALS:

A. Wilson is the owner of a domestic water well located upon Lots 1 and 2, Block 6, Town of Chemult, Klamath County, Oregon, and owns the intervening property lying to the West of the above described property which abuts the Sutton property.

B. Sutton is the owner of the following described real property situated in Klamath County, Oregon upon which is situated a dwelling house:

Beginning at the S.E corner of Section 20, T 27S, R. 8E. W.M., said point being marked by a 1982 Brass Cap; thence N 89°47'21" W. along the South line of Section 20, 1315.77 feet to the East 1/16 corner, said point being marked by a 5/8" iron pin; thence N 0°07'59" E. 2643.75' to the C.E. 1/16 corner; said point being marked by a 5/8" iron pin; thence S 89°46'16" E. along the East-West centerline of Section 20, 726.62' to a point marked by a 5/8" iron pin; thence South 749.36' to a point marked by a 5/8" iron pin; thence East 583.00' to a point on the East line of Section 20, said point being marked by a 5/8" iron pin; thence South along the East line of Section 20, 144.62' to a point marked by a 5/8" iron pin; thence N 56°56'20" W. 155.11 to a point marked by a 5/8" iron pin; thence West 453.00' to a point marked by a 5/8" iron pin; thence South 1130.32' to a point marked by a 5/8" iron pin; thence East. 583.00' to a point on the East line of Section 20, said point being marked by a 5/8" iron pin; thence South, along the East line of Section 20, 706.00' to the point of beginning, all in Klamath County, Oregon.

C. In prior years, Wilson has supplied domestic water to Karen Sutton (formerly known as Karen Van Donk) at the property line common to Wilson and Sutton.

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D. Prior agreements have been be the verbal consent of the parties and the parties desire to memorialize their agreement concerning the supply of domestic water by Wilson to Sutton by this Agreement.

AGREEMENT:

1. **Supply of Domestic Water.** Wilson agrees to continue to supply domestic well water to Sutton at the existing pipe at the property line common to Wilson and Sutton under the terms and conditions of this Agreement.

2. **Annual Fee.** Sutton will pay an annual fee in the sum of \$408.00 (\$34.00 per month) for the domestic water on or before February 1 of each year. In the event Sutton fails to pay the annual fee, Wilson may terminate this agreement and discontinue the furnishing of domestic water upon ten days written notice.

3. **Termination.** Either party to this Agreement may terminate the Agreement upon six months written notice to the other party without the right or claim for damages by the terminated party. In the event Wilson terminates the Agreement for any reason, Wilson shall refund any unused portion of the annual fee at a rate of \$1.12 per day to Sutton.

4. **Quality and Quantity.** Wilson agrees to supply domestic water to Sutton of the same quality and quantity as supplied for the domestic use upon the property of Wilson. Sutton waives any right to damages against Wilson for failure of the domestic well or pipeline system for any reason or for the quality or purity of the water. The quantity of water to be supplied under this Agreement is for domestic use only for one household.

5. **Indemnification.** Sutton shall indemnify and defend Wilson from any claim, loss, or liability arising out of or related to the use or supplying of domestic water to Sutton including any such claim, loss, or liability that may be caused or contributed to in whole or in part by Wilson's own negligence or failure to supply water of domestic quality and quantity. Wilson shall have no liability to Sutton for any injury, loss, or damage caused by Wilson in supplying domestic water to Sutton.

6. **Governmental Authority.** The parties hereto will cooperate in all ways to gain any necessary governmental

Authority for the supplying of domestic water under this Agreement. In the event any governmental authority restricts or curtails the provisions of this Agreement, the parties hereto shall be bound by such governmental decision.

7. **License.** Sutton agrees that this Agreement is personal to them in the nature of a revocable license and it may not be assigned or transferred to any third party and does not run with the land.

8. **Amendments.** Only an instrument in writing executed by all the parties, which writing must refer to this Agreement, may amend this Agreement.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict-of-laws principles.

10. **Attorney Fees.** If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue shall be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in preparation or in prosecution or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

11. **Arbitration.** Any dispute, controversy, or claim arising out of or relating to this Agreement shall be settled by arbitration. Unless the parties otherwise agree, the arbitration shall be administered by Arbitration Service of Portland, Inc. Judgment on the award rendered by the arbitrator may be entered in the circuit court in the county in which the arbitration occurs, and the resolution of the disputed matter as determined by the arbitrator shall be binding on the parties. Any arbitration shall be conducted in Klamath County, Oregon, in accordance with the following provisions:

11.1 Except as otherwise provided in this Section 11, the arbitration shall be conducted in accordance with Arbitration Service of Portland, Inc. rules.

11.2 A party may, without inconsistency with this Agreement, seek from a court any interim or provisional relief that may be necessary to protect the rights or property of that party pending the establishment of the arbitration or pending the arbitrator's determination of the merits of the dispute, controversy, or claim.

11.3 The arbitrator shall have authority to issue preliminary and other equitable relief.

11.4 The arbitrator shall have the authority to award any remedy or relief that an Oregon court could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process, except that the arbitrator shall not have authority to award punitive damages or any other amount for the purpose of imposing a penalty as opposed to compensating for actual damage suffered or loss incurred.


12. **Injunctive and Other Equitable Relief.** The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other parties shall be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

IN WITNESS the Parties have executed this Agreement effective, the day and year first above.

 3/2/00
Kenneth J. Wilson

 3/2/00
Karen A. Wilson


Roger Sutton


Karen A. Sutton