

P/O AFTER RECORDING RETURN TO: MARK BLACKMORE
Box 569 OAKRIDGE, Or. 97463

**WELL USE AND MAINTENANCE AGREEMENT
 (EASEMENT FOR ACCESS TO AND USE OF WELL), ROADWAY ACCESS EASEMENT,
 AND POWER LINE EASEMENT**

RECITALS:

A. We, **MARK V. BLACKMORE** ("BLACKMORE") and **DONNA LOUISE EMLEY** ("EMLEY") are the separate Owners of two (2) properties, located in **Klamath** County, Oregon. **BLACKMORE** and **EMLEY** desire to set forth in writing an agreement relating to the sharing of water from a well by the two (2) properties and the maintenance of the well, pump, pumping equipment, and gauges relating to this well and water system. We also want to set forth a power line sharing agreement and our roadway agreement.

B. The two (2) properties are hereinafter known as Parcel I and Parcel II:

Parcel I (as described on attached **EXHIBIT A**, incorporated by this reference) is the property upon which the well, power transformer and roadway is located and is owned by **EMLEY**.

Parcel II (as described on attached **EXHIBIT A**) is the adjacent property owned by **BLACKMORE** that "needs joint usage" of the well, power line and roadway.

AGREEMENTS:

1. All recitals set forth above are incorporated herein by reference.

2. **Well Agreement.** **EMLEY** (as Owner of Parcel I) hereby conveys to **BLACKMORE** (as Owner of Parcel II) a perpetual, nonexclusive easement to access and use the existing well located on Parcel I and draw water therefrom for the use and benefit of Parcel II. In granting this easement, **EMLEY** reserves the right to herself, her heirs and assigns, forever the right of access to the use of the well, and the right to draw **seventy-five (75%)** percent of the water therefrom for the use and benefit of Parcel I.

2.1 The easement shall run over and across the property known as Parcel I (described on attached **EXHIBIT A**). The use of water for Parcel II shall not exceed **twenty-five (25%)** percent of the drawing power of the well system, it being understood that no more than **one (1)** residence will be established on Parcel I, and no more than **one (1)** residence on Parcel II. Such usage shall, at the option of **EMLEY** or **BLACKMORE**, may be partially established by metering the parties' use of the water from the well.

State of Oregon, County of Klamath
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 --- Linda Smith, County Clerk ---
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2.2 This grant is made upon the following terms:

a. Parcel II is granted the right to use the water from the existing well on Parcel I. Should the use exceed the limitation of **paragraph 2.1**, above, for which it is originally intended, then water rights and this easement shall be extinguished;

b. It is understood that the Owner of Parcel II's right to use and access the well shall include the right to come upon Parcel I property for maintenance of the well, holding tank, pump, pump shed, and for the installation and maintenance of the pipeline and such public utilities as may be needed to serve the well. The pipeline shall be laid along the shortest path, acceptable to **BLACKMORE**, from the wellhead to Parcel II. **BLACKMORE** shall have an easement equal to **ten (10')** feet, the centerline of which is the pipeline, along the pipe to come onto Parcel I and maintain repair, install or reinstall the pipeline on Parcel I.

c. In the event the well ceases to provide adequate water for any reason, the following shall apply; at the option of the then respective Owner of Parcel I and/or Parcel II, respective Owner's successors or assigns, the parties may agree in writing to replace the well and pump, sharing the costs and extending this agreement. The Owner of Parcel II shall have the right to install a new replacement well on Parcel I (should the Owner of Parcel I refuse to participate in the cost of the replacement well). However, the Owner of Parcel II shall be entirely responsible for payment of the cost of establishing the new well ("new well"), and all necessary equipment. The Owner of Parcel I shall thereafter not have the right to use the water from the new well, unless consent thereto is given in writing by the Owner of Parcel II. The location of the new well, the extension of power to the new well site, the moving of the pipeline to the new well site, the installation of the pump, pump shed and holding tank shall be decided upon by the Owner of Parcel II, and the Owner of Parcel I hereby consents to this on behalf of all present and future Owners of Parcel I. In the event of a new well without participation by the Owner of Parcel I, all maintenance provisions shall be the obligation of the Owner of Parcel II; and the pipeline easement for maintenance of the pipeline shall shift to the location of the new pipeline.

2.3 Maintenance Costs. The parties shall share the cost of maintaining the current well and pumping equipment ("costs"):

a. The Owner of Parcel II shall pay to the Owner of Parcel I the sum of **TEN AND NO/100 DOLLARS (\$10.00)** per month as Parcel II Owner's share of the electricity bill for operating the pump commencing with the month the Owner of Parcel II starts using the water from the well and continuing at that rate during the next **five (5) years (sixty (60) months)**. Thereafter, the actual electricity charge shall be split **seventy-five (75%)** percent to the Owner of Parcel I and **twenty-five (25%)** percent to the Owner of Parcel II. The **first (1st)** monthly payment shall be due on the **fifteenth (15th)** day of the month following the commencement of Parcel II's use of water from the current well, and shall be due on the **fifteenth (15th)** day of each month thereafter;

b. Should any party's use be significantly greater than that allowed by this agreement, and should that use cause the system to malfunction or to stop running or pumping, causing damage to the system, then the party using an exorbitant amount of water, and thereby abusing the system, shall be solely responsible for payment of all repair costs to the system for that particular malfunction. The parties' usage (at the option of **EMLEY** and/or **BLACKMORE**) may be partially established by metering the parties's use of the water from the well;

c. Should repair or replacement work be needed, neither party will bring in repair people without first conferring with the other party to this agreement. In the event that the parties cannot mutually agree upon a method of repair or replacement and/or repair people, then they shall each obtain bids for the repairs needed from licensed and bonded contractors, and the lowest bidder will be given the job; and

d. The Owner of Parcel II shall be solely responsible for maintenance, repair or replacement costs of the pipeline carrying water from the well head to Parcel II's boundary line.

3. Power Line Easement.

3.1 **Transformer.** **EMLEY** hereby conveys to **BLACKMORE** the right to take power from the transformer located on Parcel I, and transport said power to Parcel II, provided **BLACKMORE** pays all fees and costs to tap into such power transformer and that **BLACKMORE** establish a separate meter to measure his power use and that **BLACKMORE** pays the utility company charge for **BLACKMORE's** use of power.

3.2 **Power Lines.** **BLACKMORE** shall have the right to install power lines (above or below ground) in a location (of **BLACKMORE's** choice), from the transformer to Parcel II; provided, however that **BLACKMORE** pays all expenses of establishing and maintaining said power line. The Owner of Parcel II shall have an easement equal to **ten (10')** feet, the center line of which is the power line to be located on Parcel I, to come onto Parcel I to install, perform maintenance, repair or replacement of the power line. This power line may be extended to the "new well" as described in **paragraph 2.2**, above, to provide power to operate the well and pump and such extension shall have all the rights described in this paragraph and attached to the main power line (i.e., location, easement for maintenance, duty to repair, etc.).

4. **Roadway Easement.** A drawing of the general layout of Parcel I and Parcel II is attached hereto as **EXHIBIT B** and incorporated herein by reference thereto. The "roadway" is depicted on **EXHIBIT B** as existing between the dotted line ("---") and the boundary line of Parcel I located adjacent to the dotted line and extending to **Squaw Flat Road** between the boundaries of the **66.30** foot panhandle of Parcel I.

4.1 **Grant of Easement.** **EMLEY** hereby conveys to **BLACKMORE** a perpetual, non-exclusive easement to use the strip of land described on attached **EXHIBIT B** and above as the "roadway". This easement is located on Parcel I described on attached **EXHIBIT A**. The easement strip shall be **sixty (60)** feet in width as depicted on **EXHIBIT B**.

4.2 Maintenance of Roadway. The Owners of Parcel I and Parcel II shall equally share the maintenance costs for the existing traveled roadway over the roadway titled "joint portion" as depicted on attached EXHIBIT B (hereafter "joint portion"). The Owner of Parcel II shall be solely responsible for installation, reconstruction and maintenance of the roadway from the "x" drawn in the roadway on EXHIBIT B to the boundary of Parcel II (hereafter "Mark's portion").

4.3 Gates and Fences. At the option and expense of the Owner of Parcel II, Mark's portion of the roadway may be fenced and gated at the Owner of Parcel II's sole cost and expense. The gate(s) may be locked and the Owner of Parcel I will not be entitled to a key(s) to said lock(s) on the gate(s) without the written permission of the Owner of Parcel II. At the option of both respective Owners of Parcel I and Parcel II (both parties must agree) the joint portion of the roadway may also be fenced and gated. The gate(s) may be locked and both the Owner of Parcel I and Parcel II shall be entitled to a key(s) to any lock(s). The installation, maintenance, repair and replacement costs of the fencing, gate(s) and lock(s)/key(s) on the joint portion shall be shared equally by the Owners of Parcel I and Parcel II. The location of any gate(s) on the joint portion of the roadway must be unanimously chosen by both Parcel Owners. The installation, maintenance, repair and replacement costs of the fencing, gate(s) and lock(s)/key(s) on Mark's portion of the roadway shall be the sole responsibility of the Owner of Parcel II.

5. Second Power Line Easement. EMLEY hereby conveys to BLACKMORE the right to install, repair, and maintain power lines (above and below ground) along the border of the roadway easement granted and described in paragraph 4., above, (both joint portion and Mark's portion).

6. Miscellaneous. All easements described in this agreement shall be subject to all prior easements or encumbrances of record. All easements described in this agreement are granted over and across Parcel I as described on attached EXHIBIT A. All easements described in this agreement shall be appurtenant to Parcel II as described on attached EXHIBIT A. All easements described in this agreement shall run with the land described on attached EXHIBIT A.

7. Life Estate to BLACKMORE. EMLEY hereby grants to BLACKMORE the right to possess the residential home located on Parcel I for the lifetime of BLACKMORE. This right is, at the option of BLACKMORE, exclusive, but personal to BLACKMORE, and will terminate upon the death of BLACKMORE.

8. Enforcement of Terms. In the event suit or action is taken to enforce any of the terms of this Agreement, the prevailing party in such suit or action shall be entitled to such sum as the court shall deem reasonable as attorney fees; and in the event that an appeal is taken from the decision of the trial court, such further sum as may be fixed by the appellate court as reasonable attorney fees. If either party is in default under the terms of this Agreement, and the other party delivers this Agreement to an attorney for the purpose of remedying the default, and whether or not any suit, action or other proceeding is filed, the defaulting party shall pay the reasonable fees of the attorney to whom this agreement was delivered.

Before involving an attorney to address any perceived default or breach of this Agreement, notice shall be given in writing specifying the perceived default or breach and allowing the parties ten (10) days time within which to attempt to meaningfully negotiate and fully resolve the potential dispute. Notice shall be deemed given by sending a letter in first class mail appropriately addressed to a party.

9. **Successors.** The parties intend that all terms of this Agreement shall be binding upon their heirs, successors and assigns.

Owner of PARCEL I

Donna Louise Emley
Donna Louise Emley
Dated: 4/16, 2003.

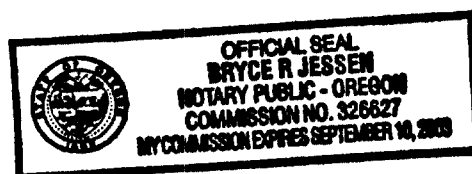
Owner of PARCEL II

Mark V. Blackmore
Mark V. Blackmore
Dated: 4-8-03, 2003.

STATE OF OREGON)
County of Lane) ss.

On the 8th day of April, 2003, this instrument was acknowledged by **MARK V. BLACKMORE**, before me.

Bryce R. Jessen
Notary Public for OREGON
Seal:



STATE OF OREGON)
County of Lane) ss.

On the 16th day of April, 2003, this instrument was acknowledged by **DONNA LOUISE EMLEY**, before me.

Judith J. Baker
Notary Public for OREGON
Seal:



PARCEL I (EMLEY)

TRACT 1114, BLOCK 2, LOT 7 POR, ACRES 7.69 COUNTY OF KLAMATH,
STATE OF OREGON

SEE ALSO: M97-14326

A parcel of land located in Section 22, Township 36 South, Range 10 East of Willamette Meridian, in the County of Klamath, State of Oregon, being a portion of Lot 7, Block 2, of Tract 1114, a Klamath County Subdivision, being more particularly described as follows:

Beginning at the Southeast corner of Lot 7, Block 2, Tract 1114; thence North 25 degrees 10' 50" East 66.30 feet; thence West 600.78 feet; thence North 0 degrees 35' 53" East 393.70 feet to the Southeast corner of Lot 5, Block 2; thence along the lot line common to Lots 5 and 7 North 89 degrees 54' 36" West 661.48 feet, more or less, to the most Southerly Northwest corner of Lot 7 and the Southwest corner of Lot 5; thence South 0 degrees 32' 23" West 454.43 feet, more or less, to the Southwest corner of said Lot 7; thence East along the South line of Lot 7 1233.59 feet, more or less, to the point of beginning.

Code 8 Map 3610-2200 TL 901

PARCEL II (BLACKMORE)

TRACT 1114, BLOCK 2, LOT 5, ACRES 20.18 COUNTY OF
KLAMATH, STATE OF OREGON

SEE ALSO: M97-14325

24720

LOCATED IN SECTION 22, T 36 S, R 10 E, W. M.

KLAMATH COUNTY, OREGON
IN LOT 7 & 5 BLOCK 2, TRACT 1114

