

WJC-1396-5032

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AGREEMENT TO PROVIDE WATER SOURCE FOR FIRE PROTECTION USE

Agreement made this 3 day of Sept, ²⁰⁰³~~1998~~, between Carolyn Ramirez, Provider, as developer of a subdivision in the Pine Grove area, Klamath County, Oregon, known as Scenic Valley and George MacKenzie, who are Buyers of the following described lot in said subdivision (herein referred to as Buyer).

Map R-3910-009AA - 01300-00
Lot 7 Code 1162
Scenic Valley Tract 1332

Pursuant to requirements of Klamath County Fire District No. 1 (Fire District) Provider has constructed a 10,000 gallon water reservoir on Provider's property located adjacent to the subdivision known as Scenic Valley the sole purpose of which reservoir is to provide to Fire District a water supply for fire suppression to homes and other residential structures constructed on lots in said Scenic Valley subdivision, include structures on the above described lot, which reservoir is served by a commercial well owned by Provider and located on Providers's property.

Buyer desires to purchase and Provider desires to sell to Buyer the above described lot. As part of the consideration for said purchase and sale the Buyer is willing to execute this agreement to pay an annual charge to Provider toward the expenses incurred by Provider in the maintenance and repair of the well, pumps and reservoir hereafter described.

AGREEMENT

In consideration of the foregoing and of the mutual covenants and promises set forth below, the parties agree as follows:

AMERITITLE, has recorded this instrument by request as an accomodation only, and has not examined it for regularity and sufficiency or as to its effect upon the title to any real property that may be described therein

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State of Oregon, County of Klamath
 Recorded 12/30/03 3:16 pm
 Vol M03 Pg 94093-97
 Linda Smith, County Clerk
 Fee \$ 41.00 # of Pgs 5

Return to: AmeriTitle

41.0 AM

SECTION ONE

Provider, her successors and assigns, will maintain said reservoir in good condition sufficient to hold and maintain it full of water to its capacity and will equip the reservoir with such fittings and equipment required by Klamath County Fire District No. 1., or its successor, for the sole purpose of providing a water supply for use by fire suppression equipment to extinguish fires in said subdivision on Tract 1332.

SECTION TWO

Provider will use her best efforts to keep said reservoir to full capacity at all times except when reservoir water is being used to extinguish fires. During times when water is being drawn for fire suppression purposes the well and reservoir shall be equipped and maintained so the reservoir water supply can be replenished. In the event that water must be drained from the tank for the purpose of repairing or otherwise servicing the interior of the reservoir the Fire District shall be notified within a reasonable time prior to draining, not less than seven days, so as to enable the Fire District to provide an emergency source of water, including use of Provider's well and pumps.

SECTION THREE

Buyer shall pay to Provider, annually, in advance, the sum of One Hundred Fifty (\$150.00) Dollars to cover costs of maintenance, servicing, inspection and repair of the reservoir, well, pumps and fittings. The first payment shall be made at such time as Buyer shall purchase the above described lot. Said payment shall be in an amount equal to the pro rate of \$150.00 for the remainder of the calendar year. The sum of \$150.00 will be due on or before January 10th of the next ensuing year and on or before the 10th of January each year thereafter for so long as this

agreement is in effect.

The annual charge for maintenance and repairs shall be adjusted at intervals of approximately five (5) years. The first adjustment shall become applicable on January 10, 2004 and adjustments thereafter on the same date every five (5) years. The annual charge of \$150.00 shall be increased at the end of each five year period to reflect the percentage change from the beginning of the previous five year period to the end of said period in the U.S. City Average Consumer Price Index published by the U.S. Bureau of Labor Statistics or the nearest comparable data on changes in the cost of living if such index is no longer published. Should the cost of living index decrease in any relevant five year period the charge for the previous five year period shall be continued for the next five years.

SECTION FOUR

In the event that all the lots in Scenic Valley Tract 1332 and the improvements thereon become served by a district water supply or other water supply for fire protection that is equivalent or superior to the reservoir and well described herein this agreement will terminate and be of no further force and effect. In the event Provider shall construct or install the substitute water supply the Buyer will continue payment of the maintenance and repair costs as set forth herein.

SECTION FIVE

In the event that Provider is prevented or impeded by law or by any other cause beyond the control of Provider, from lawfully and peacefully performing any obligation described herein, then for such period Provider shall be excused from performance of the obligations prevented or impeded by the causes above described. In the event the reservoir or well is destroyed by causes

over which Provider has no control, Provider may at Provider's option terminate this agreement by giving owner or owner's successors 30 days notice in writing of termination.

SECTION SIX

The obligations set forth herein shall run with the land and shall be binding on and shall inure to the benefit of the successors, assigns, heirs and personal representatives of the parties. Nothing contained herein shall be construed to convey to Buyer any ownership interest in the reservoir, well or pumps.

SECTION SEVEN

Nothing contained herein shall obligate Provider to furnish, guarantee or assure fire protection to Buyer or promise or guarantee that adequate fire protection will be provided by any fire district or by anyone. Provider may enter into agreements to provide water to other buyers of her lots in the Pine Grove area.

SECTION EIGHT

In the event Provider shall fail to keep the reservoir, well, pumps in good condition and repair as required herein the Buyer, alone or in conjunction with other lot owners in the Scenic Valley Subdivision Tract 1332, may enter upon Provider's premises to make any necessary and reasonable repairs. In such case the Provider shall be obligated to reimburse the owner or owners for the cost of such repair with interest at the legal rate calculated from the date repairs are completed. This remedy shall be in addition to all other remedies afforded in law or equity.

In the event Owner shall fail to pay the annual charge for maintenance and repair when due all overdue amounts shall bear interest at the rate of 2% per month compounded annually

until the full sum of principal and interest is paid.

In the event that any action is filed in relation to this contract including any action to recover charges for repairs and maintenance the prevailing shall be entitled to receive and recover from any non-prevailing party all expenses and reasonable attorney fees incurred by the prevailing party for investigation, preparation for trial, and for all appeals.

SECTION NINE

This agreement shall be governed by, construed and enforced in accordance with the laws of the state of Oregon

In witness whereof each party to this agreement has caused it to be executed at Klamath Falls, Oregon on the date indicated below

Dated this 3rd day of September, 2003.

Buyer

Buyer

Provider

STATE OF

COUNTY OF

On this 3rd day of September, 2003, before me, a Notary Public in and for the State of Oregon, personally appeared Carolyn A. Ramirez & George McKenzie personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledge it as the free of Carolyn A. Ramirez to be the free and voluntary act and deed of said corporation for the uses and purposes mentioned in the instrument.

IN WHITNESS WHEREOF, I have hereunto set my had and official seal the day and year first above written.

Notary Public in and for the State of Oregon

My appointment expires 8/26/06 Print Name Theresa D Mayer



Theresa D Mayer