

2007-006861

Klamath County, Oregon

1st 07-150



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04/13/2007 11:07:23 AM

Fee: \$76.00

COVER SHEET

ORS: 205.234

This cover sheet has been prepared by the persons presenting the attached instrument for recording. Any errors in this cover sheet **DO NOT** affect the transaction(s) contained in the instrument itself.

After recording, return to:
Jerry M. Molatore
2325 Linda Vista Drive
Klamath Falls, OR 97601

Send Tax Statements to:
Same as on file

The date of the instrument attached is 3/28/07.

- 1) NAMES(S) OF THE INSTRUMENT(S) required by ORS 205.234(a)
Amendment to Geothermal Well Agreement and Easement

- 2) PARTY(IES)/GRANTOR, required by ORS 205.125(1)(b) and ORS 205.160:

Thompson, Kenneth & Willa _____

Powley, Ronald & Vicki _____

- 3) PARTY(IES)/GRANTEE, required by ORS 205.125(1)(b) and ORS 205.160

Kent, Robert & Sally _____

Molatore, Jerry & Yvette _____

- 4) TRUE and ACTUAL CONSIDERATION (if any), ORS 93.030

\$ n/a

- 6) RE-RECORDED to correct: _____
Previously recorded as: _____

76-F

AMENDMENT TO GEOTHERMAL WELL AGREEMENT AND EASEMENT

DATE:

March 28

, 2007



PARTIES:

KENNETH GAROLD THOMPSON and
WILLA IONE THOMPSON,
Trustees of the Kenneth and Willa Thompson Family Trust
dated August 10, 1989

("Thompson Trust")

and

RONALD LEE POWLEY and
VICKI JEAN POWLEY
Trustees of the Ronald Lee Powley and Vicki Jean Powley
Family Trust 1988

("Powley Trust")

and

ROBERT A. KENT and SALLY M. KENT
Husband and Wife

("Kent")

and

JERRY M. MOLATORE and YVETTE M. MOLATORE
Husband and Wife

("Molatore")

RECITALS:

The Thompson Trust and the Powley Trust have entered into an agreement providing for the sharing of water from a geothermal well located on the Thompson Trust property. A copy of that geothermal well agreement (hereinafter referred to as the "Geothermal Well Agreement") is attached hereto and made a part hereof. The Geothermal Well Agreement describes the Thompson Trust property and the Powley Trust property. The Powley Trust has installed geothermal water transmission lines from a geothermal well located on the Thompson Trust property to the Powley Trust property, at the expense of the Powley Trust.

Molatore owns the following property: Lots 3 and 4 in Block 2 of First Addition to Loma Linda Heights according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon (Molatore property). Kent owns the following property: Lot 2 in Block 2 of First Addition to Loma Linda Heights according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon (Kent property).

The parties have agreed to allow Molatore and Kent to extend the geothermal transmission lines from the Powley Trust property, across Lot 8, Block 2 of Loma Linda Heights, to the Molatore property and the Kent property. Molatore and Kent have each paid to the Powley Trust one-third (1/3) of the cost to the Powley Trust of installation and construction of the geothermal lines from the Thompson Trust property to the Powley Trust property. The geothermal transmission lines from the Powley Trust property to the Molatore property and the Kent Property have been installed, at the expense of Molatore and Kent, and the Molatore property and the Kent property now use the heat and water from the well on the Thompson Trust property. Kent and Molatore enjoy the benefits of an easement across Lot 8, Block 2 of Loma Linda Heights for placement and operation of the existing geothermal transmission lines.

Kent and Molatore have agreed to become parties to the Geothermal Well Agreement and to share the obligations assumed by the Powley Trust regarding the well and the transmission lines in the Geothermal Well Agreement.

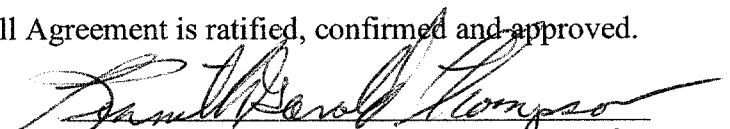
Therefore the parties agree as follows:

1. **Grant of Easement by Powley Trust.** Powley Trust grants to Kent and Molatore a perpetual and nonexclusive easement across that portion of the Powley Trust property shown on Exhibit A attached hereto, for the benefit of, and appurtenant to the Kent property and the Molatore property for the purpose of constructing, reconstructing and maintaining the buried geothermal line on the Powley Trust property.
2. **Grant of Easement by Thompson Trust.** Paragraph one of the Geothermal Well Agreement is amended to provide that Molatore and Kent are included as grantees of the easement across the Thompson Trust property.
3. **Grant of Easement by Molatore to Kent.** Molatore grants to Kent a perpetual and nonexclusive easement across that portion of the Molatore property shown on Exhibit A attached hereto, for the benefit of, and appurtenant to the Kent property for the purpose of constructing, reconstructing and maintaining the buried geothermal line on the Molatore property.
4. **Well on Kent Property.** Kent acknowledges that the geothermal well located on the Kent property is owned one-half (1/2) by Kent, for the benefit of the Kent property, and one-half (1/2) by Molatore, for the benefit of the Molatore property, and that all rights pertaining to the well **and the use of its water** shall run with the Kent property and the Molatore property.
5. **Thompson Agreement.** The Geothermal Well Agreement is amended as follows:
 - a. Powley Trust, Kent, and Molatore shall evenly divide the cost of repair and replacement of the transmission lines from the pump house on the Thompson Trust property to the Powley Trust property. Kent and Molatore shall evenly divide the cost of repair and replacement of the main line extension from the Powley Trust property to the extension from the main line to the Kent property. Molatore shall pay the cost of repair and replacement of the transmission line from the Kent extension to the Molatore house. Kent shall pay the cost of repair and replacement from the Kent extension of the main line to the Kent house.

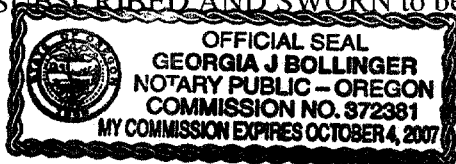
- b. Thompson retains his rights under paragraph three of the Agreement.
- c. Molatore and Kent agree to equally share with the Powley Trust all obligations imposed on the Powley Trust property under the terms of the Geothermal Well Agreement. The rights and privileges afforded to the Powley Trust property under the Agreement shall likewise be shared equally among the Powley Trust property, the Kent property, and the Molatore property, except those obligations specific to each property as set forth in this paragraph five.
- d. Paragraph four of the Agreement is amended to provide that Kent and Molatore are parties to the Agreement and that the costs of maintenance, repair or replacement, if not objected to in writing, shall be allocated one-fourth (1/4) to each party.
6. This agreement has been prepared on behalf of Molatore, by Jerry M. Molatore, Attorney at Law. The other parties to this agreement acknowledge that Jerry M. Molatore does not and cannot represent any of them, and that each party has the right to have this document reviewed by an attorney of its choice.

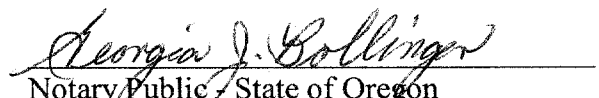
In all other respects the Geothermal Well Agreement is ratified, confirmed and approved.

Dated: 3-9-07, 2007.



Kenneth Garold Thompson, Co-Trustee of
the Kenneth and Willa Thompson Family
Trust dated August 10, 1989

SUBSCRIBED AND SWORN to before me this 9th day of March, 2007.

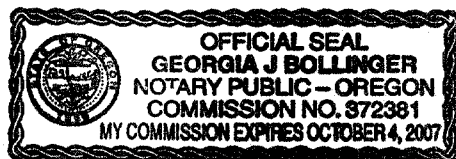


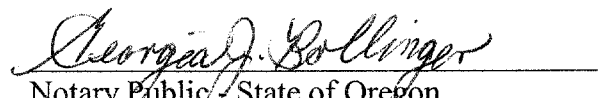

Notary Public, State of Oregon
My Commission Expires: 10/4/07

Dated: 3-09, 2007.


Willa Ione Thompson, Co-Trustee of the
Kenneth and Willa Thompson Family Trust
dated August 10, 1989

SUBSCRIBED AND SWORN to before me this 9th day of March, 2007.



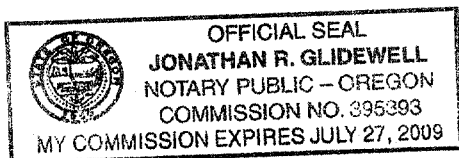

Notary Public, State of Oregon
My Commission Expires: 10/4/07

Dated: 3-20, 2007.

Ronald Powley

Ronald Lee Powley, Co-Trustee of the Co-Trustee of the Ronald Lee Powley and Vicki Jean Powley Family Trust 1988

SUBSCRIBED AND SWORN to before me this 20 day of March, 2007.



[Signature]
Notary Public - State of Oregon

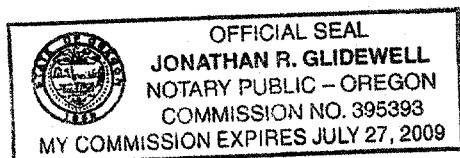
My Commission Expires: July 27, 2009

Dated: 3-20, 2007.

Vicki Jean Powley

Vicki Jean Powley, Co-Trustee of the Co-Trustee of the Ronald Lee Powley and Vicki Jean Powley Family Trust 1988

SUBSCRIBED AND SWORN to before me this 20 day of March, 2007.



[Signature]
Notary Public - State of Oregon

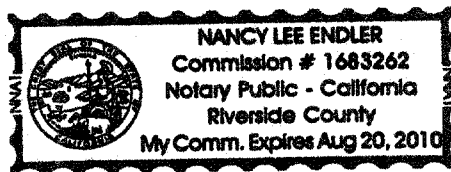
My Commission Expires: July 27, 2009

Dated: 3/28/, 2007.

Robert A. Kent

Robert A. Kent

SUBSCRIBED AND SWORN to before me this 28th day of MARCH, 2007.



Nancy Lee Endler

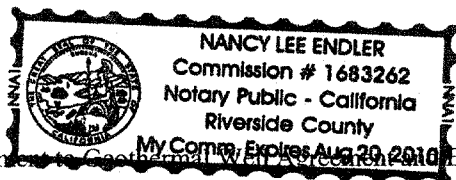
Notary Public - State of ~~Oregon~~ CALIFORNIA
My Commission Expires: August 20, 2010

Dated: March 28, 2007.

Sally M. Kent

Sally M. Kent

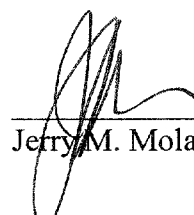
SUBSCRIBED AND SWORN to before me this 28th day of March, 2007.

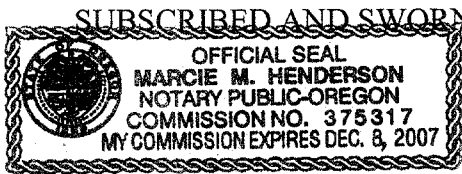


Nancy Lee Endler

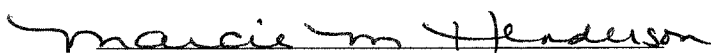
Notary Public - State of ~~Oregon~~ CALIFORNIA
My Commission Expires: August 20, 2010

Dated: 2-16, 2007.


Jerry M. Molatore

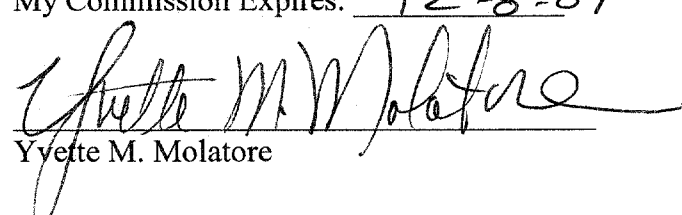


SUBSCRIBED AND SWORN to before me this 16 day of Feb., 2007.

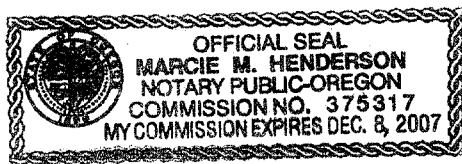

Notary Public - State of Oregon


My Commission Expires: 12-8-07

Dated: 2-20, 2007.


Yvette M. Molatore

SUBSCRIBED AND SWORN to before me this 20 day of FEB., 2007.




Notary Public - State of Oregon

My Commission Expires: 12-8-07

GEOTHERMAL WELL AGREEMENT

THIS AGREEMENT made this 16th day of March 2004, by and between KENNETH GAROLD THOMPSON and WILL IONE THOMPSON, co-trustees of the Kenneth and Willa Thompson Family Trust dated August 10, 1989 (hereinafter called "Thompson Trust"), and RONALD LEE POWLEY and VICKI JEAN POWLEY, co-trustees of the Ronald Lee Powley and Vicki Jean Powley Family Trust 1988 (hereinafter called "Powley Trust").

RECITALS:

- A. Thompson Trust is the owner of a parcel of real property situate in Klamath County, Oregon, described as follows:

Lot 15, Block 1, First Addition to Loma Linda Heights in the City of Klamath Falls, according to the official plat thereof on file in the office of the county clerk of Klamath County, Oregon, less and excepting that portion of Lot 15, Block 1, deeded to the City of Klamath Falls, Oregon, by Deed recorded September 20, 1966, in Volume M66, Page 9333, and re-recorded July 1, 1977, in Volume M77, Page 11642, all deed records of Klamath County, Oregon;

upon which is situated a geothermal well which is suitable for domestic heating purposes, hereinafter called the "Thompson Trust Property".

- B. Powley Trust is the owner of a parcel of real property situate in Klamath County, Oregon, described as follows:

Lot 9 in Block 2 of FIRST ADDITION TO LOMA LINDA HEIGHTS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. Saving and excepting that portion deeded to the City of Klamath Falls in Deed Volume M66 on page 9332, Microfilm Records of Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the South line of Lot 9, Block 2, FIRST ADDITION TO LOMA LINDA HEIGHTS, said point being 3.80 feet East of the Southwest corner of said Lot; thence Easterly along an arc of a curve having a radius of 35.00 feet, through an angle of 62 degrees, a distance of 37.87 feet more or less to the

South line 36.05 feet more or less to the point of beginning, all in the City of Klamath Falls, Oregon;

which parcel lies across Linda Vista Drive from the Thompson Trust Property.

Said property shall hereinafter be referred to as the "Powley Trust Property".

- C. Powley Trust desires to use the geothermal well on the Thompson Trust Property as a heat source for the Powley Trust Property and Thompson Trust is willing to allow it to do so under the conditions set forth in this agreement.

AGREEMENT

In consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. Thompson Trust grants the Powley Trust an easement and right of way from the pump house currently located upon the Thompson Trust Property to the city right-of-way for Linda Vista Drive for the sole purpose of laying, repairing and replacing the geothermal transmission system to extract heat from the geothermal well on the Thompson Trust Property to heat the single family residence located on the Powley Trust Property. The exact location of the easement shall be in the discretion of Thompson Trust so long as it exits the Thompson Trust Property at a point acceptable to the City of Klamath Falls and Powley Trust. The grant of this easement shall be perpetual and run with the respective properties.
2. Each party shall be responsible for the repair and replacement of any transmission lines that are for the sole purpose of heating the individual residences.
3. In the event the temperature of the well falls below 150° Fahrenheit for a period of time in excess of 30 days, the Thompson Trust may disconnect the water transmission line to the Powley

Trust Property. If Powley Trust desires to do so it shall be entitled to conduct such repairs or improvements to the well as may reasonably be expected to cause the temperature of the well water consistently exceed 150 .Thompson Trust may, but shall not be required to, participate in the cost of such repairs or improvements.

4. If in the opinion of either party the geothermal well, the pumps or the common transmission lines require maintenance, repair or replacement to maintain reasonable usefulness the party in whose opinion such maintenance, repair or replacement is necessary shall notify the other party in writing, describing the maintenance, repair or replacement to be undertaken and the cost thereof if known. If the party receiving the notice shall not object in writing delivered to the first party within 7 days, each party shall be responsible for one-half (1/2) of the cost thereof. If an objection is made and the parties are unable to reach an agreement, the parties shall submit the controversy to arbitration in accordance with the Oregon Revised Statutes.

5. Thompson Trust does not warrant the chemical composition of the water, quality of the water nor the quantity of water.

6. In the event either party fails to fulfill their obligations under this agreement, the other party may perform on behalf of the defaulting party.

7. In the event suit or action is instituted by either party, the prevailing party shall be awarded attorney fees in such suit or action or upon appeal.

8. This agreement shall bind the parties, their heirs, successors and assigns.

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IN WITNESS WHEREOF, I have set my hand this 16th day of March, 2004.

Kenneth Garold Thompson
Kenneth Garold Thompson
Co-Trustee of the Kenneth and Willa Thompson Family
Trust dated August 10, 1989

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2004.

Notary Public - State of Oregon
My Commission Expires: _____

IN WITNESS WHEREOF, I have set my hand this 16th day of March, 2004.

Willa Ione Thompson
Will Ione Thompson
Co-Trustee of the Kenneth and Willa Thompson Family
Trust dated August 10, 1989

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2004.

Notary Public - State of Oregon
My Commission Expires: _____

IN WITNESS WHEREOF, I have set my hand this 16th day of March, 2004.

Ronald Lee Powley
Ronald Lee Powley
Co-Trustee of the Ronald Lee Powley and Vicki Jean
Powley Family Trust 1988

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2004.

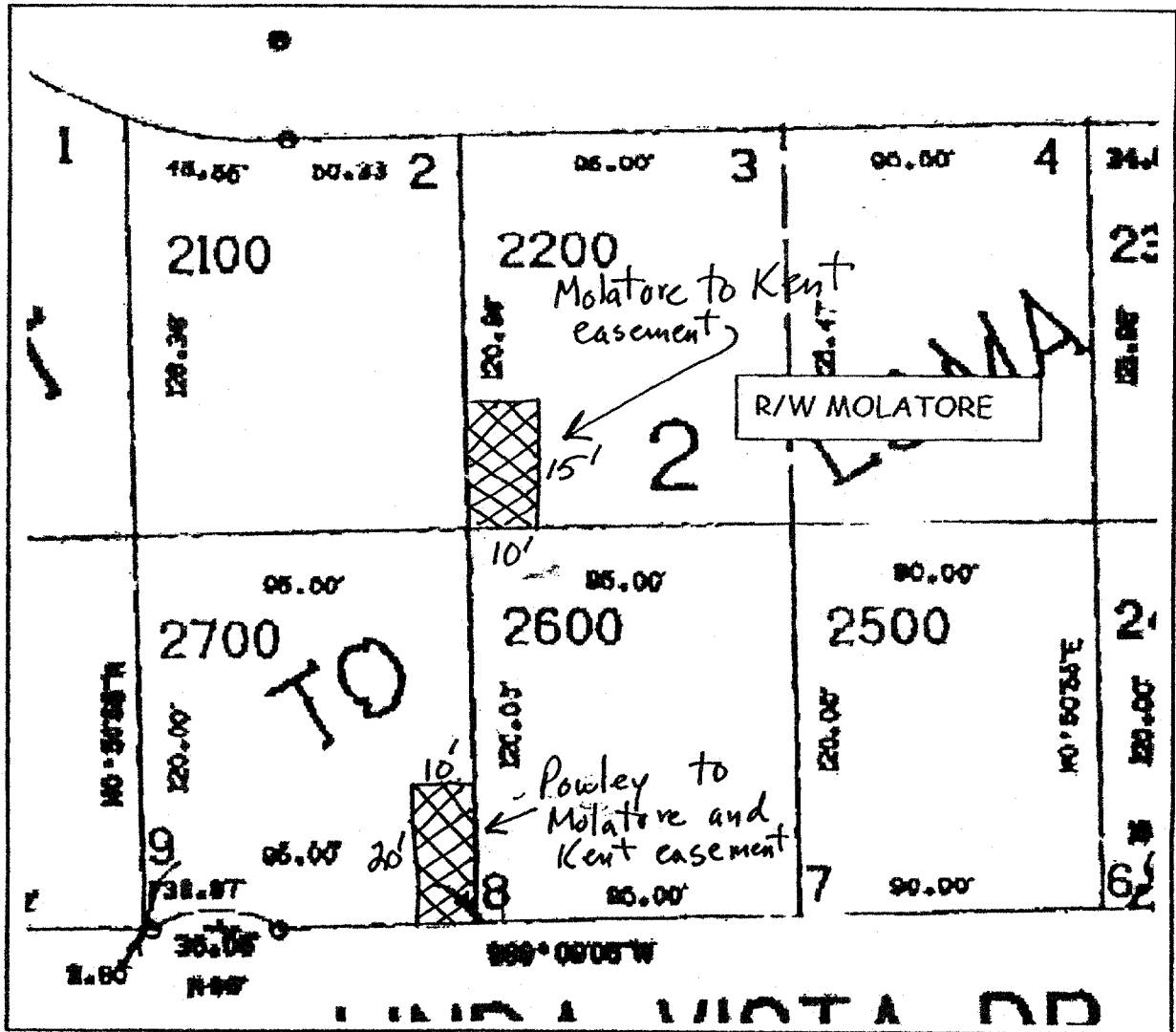
Notary Public - State of Oregon
My Commission Expires: _____

IN WITNESS WHEREOF, I have set my hand this 16th day of March, 2004.

Vicki Jean Powley
Vicki Jean Powley
Co-Trustee of the Ronald Lee Powley and Vicki Jean
Powley Family Trust 1988

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2004.

Notary Public - State of Oregon
My Commission Expires: _____



SCALE: NTS

EXTRA