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Fee: \$31.00

GRANTOR'S NAME & ADDRESS:

Esther C. Melanson
PO Box 454
Keno, OR 97627

SEND TAX STATEMENTS TO:
Unchanged

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**WATERWAY EASEMENT
AND
WELL AGREEMENT**

THIS AGREEMENT is made by and between ESTHER C. MELANSON, hereinafter called "MELANSON" and CHARLES W. YOCKEY and MICHELE L. YOCKEY, hereinafter called "YOCKEY":

R E C I T A L S

- A. WHEREAS, MELANSON was previously and is currently the owner of certain parcels of real property, which said parcels of real property utilize water from a well, located on one specific parcel of property; and
- B. WHEREAS, as a result of a sale by MELANSON to YOCKEY one of the said parcels of property has passed into the ownership of YOCKEY; and
- C. WHEREAS, MELANSON and YOCKEY desire to enter into an agreement to allow for the use and maintenance of the well, pump, pumphouse, piping and casings, as well as to enter into an agreement to allow for the maintenance and use thereof; and
- D. WHEREAS, as a result of the sale from MELANSON to YOCKEY, YOCKEY has become the owner of certain real property located in the County of Klamath, State of Oregon, legally described as follows, to wit:

PARCEL 2 OF LAND PARTITION 58-06, being a replat of Parcel 2 of "Land Partition 41-00", situated in the SE1/4 of Section 1, T40S, R7EWM, Klamath County, Oregon

hereinafter referred to as "YOCKEY PROPERTY"; and

WHEREAS, MELANSON has and continues to maintain ownership of certain real property located in the County of Klamath, State of Oregon, legally described as follows, to wit:

PARCEL 1 OF LAND PARTITION 58-06, being a replat of Parcel 2 of "Land Partition 41-00", situated in the SE1/4 of Section 1, T40S, R7EWM, Klamath County, Oregon

hereinafter referred to as "MELANSON PROPERTY".

W I T N E S S E T H:

The parties agree as follows:

1. That MELANSON shall have an undivided one-third interest and YOCKEY shall have an undivided one-third interest (remaining undivided one-third interest is set out in Water Way Easement and Well Agreement, by and between ESTHER C. MELANSON and MARION M. COHORSKY, dated May 21, 2001, Recorded May 21, 2001, Volume M01, page 23315, Microfilm Records of Klamath County, Oregon) in the water, pump, pumphouse, piping, and casings of that certain well located on "MELANSON PROPERTY", which said well is generally described as being located at a point which is approximately 100 feet South of the North property line of "MELANSON PROPERTY", measured at a point which is approximately 207 feet from the Northwest corner thereof; which such well shall be hereinafter referred to as "JOINT WELL"; and

2. Each party grants to the other an easement to appropriate water from "JOINT WELL" hereinabove described.
3. Each party grants to the other the right of ingress and egress to use and maintain the well, pump, pumphouse, pipings and casings, as they are now situated, or may be hereafter replaced.
4. Each of the parties, and/or their successors in interest, shall pay that parties' proportionate share (each being responsible for 1/3) of all costs to maintain in the present condition the well, pump, pipings and casings for "JOINT WELL". The parties agree that before any major expense is incurred, the parties shall jointly agree to the nature and amount of such expenditure, before work is commenced, and before any such expense is incurred.
5. Each of the parties hereto agree that they shall share the water produced by the said well, and that YOCKEY shall be limited to one domestic water well hookup, unless this Agreement shall be modified by the mutual agreement of the parties. It is recognized by the parties that at the present time, the pump is operated from off of the electric meter for "MELANSON PROPERTY". For so long as the pump continues to operate from off of the meter servicing "MELANSON PROPERTY", YOCKEY shall be required to pay to MELANSON the sum of \$5.00 for each month that YOCKEY shall utilize the pump (connected to MELANSON'S electric meter) to withdraw water from the well. Nothing contained in this agreement shall preclude YOCKEY from installing an additional pump and separate electrical service, in which event the responsibility for payment of any monthly sums to MELANSON as reimbursement for electrical service shall terminate.
6. In the event that any party of this Agreement fails to pay his or her proportionate share of costs upon demand, the other party may pay the same, and further may terminate the defaulting party's right to use the water during the period of default, and may file a lien upon the real property of the defaulting party by filing a "NOTICE OF LIEN" under this agreement with the County Clerk of Klamath County, Oregon. Any non-defaulting party may foreclose the lien as provided by ORS Chapter 88 and shall be entitled to attorney fees in such foreclosure, both at trial and on appeal of any such action,
7. MELANSON further grants an easement 10 feet in width over and across "MELANSON PROPERTY" which said easement or easements shall run from "JOINT WELL" as hereinabove described in a generally Westerly direction to the pumphouse located approximately 44 feet to the West thereof; and also from the said pumphouse in a generally Easterly direction to a point on the East property line of "MELANSON PROPERTY", such point being approximately 72 feet South of the Northeast corner thereof.
8. The easement hereinabove granted allows YOCKEY and YOCKEY'S successors in interest the right to go upon said property for the purpose of repair, maintenance, and installation of replacement or new piping, if such replacement or repair should become necessary in order to allow the continued enjoyment of the water from the well by YOCKEY. In the event that such repair or replacement of new piping is necessary, YOCKEY agrees to restore the surface of "MELANSON PROPERTY" as near as possible to the same condition as it was in before such installation was commenced.
9. Excepting only inasmuch as shall presently be in existence, there shall not be constructed or maintained within ten feet (10') radius of the said well, so long as the same is operated to furnish water for domestic consumption, any of the following: cesspools, sewers, privies, septic tanks, drain fields, manure piles, garbage of any kind or description, barns, chicken houses, rabbit hutches, pig pens or other enclosures or structures for the keeping or maintenance of fowls or animals, or storage of liquid or dry chemicals, herbicides or insecticides.
10. The rights created by this Agreement shall run with the land and in the event any party sells the land subject to the within Waterway Easement and Well Agreement, the purchaser shall be bound by this agreement.

11. This agreement shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective heirs, executors, administrators, successors and assigns. In construing this instrument, and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year set forth herein below.

Esther C. Melanson
ESTHER C. MELANSON

Date: 4-12-07

Charles W. Yockey
CHARLES W. YOCKEY

Date: 7-12-07

Michele L. Yockey
MICHELE L. YOCKEY

Date: 7-12-07

STATE OF OREGON, County of Klamath) ss.

PERSONALLY appeared before me on _____, the above-named ESTHER C. MELANSON and acknowledged the foregoing instrument to be her voluntary act and deed.

ESTHER CHLOE MELANSON
MICHELE LORRAINE YOCKEY
CHARLES WILLIAM YOCKEY

Susan Costic
NOTARY PUBLIC FOR OREGON

My commission expires: March 13, 2010

STATE OF OREGON, County of Klamath) ss.

PERSONALLY appeared before me on _____, the above-named CHARLES W. YOCKEY and MICHELE L. YOCKEY and acknowledged the foregoing instrument to be their voluntary act and deed.



NOTARY PUBLIC FOR OREGON

My commission expires: _____