

MTT78532-KR

2007-009893

Klamath County, Oregon



00023741200700098930090093

06/01/2007 03:24:43 PM

Fee: \$61.00

2007-013319

Klamath County, Oregon



00027867200700133190090092

07/27/2007 11:52:31 AM

Fee: \$66.00

AMENDED  
EASEMENT  
and  
WELL AGREEMENT

RECITALS:

1. On May 25, 2007 an Easement and Well Agreement (the "Agreement") was recorded at 2007-009525, real property records, Klamath County, Oregon. The parties to the Agreement were Orem Land Company, an Oregon Partnership and Wong Potatoes, Inc. and Oregon Corporation.

2. The Agreement failed to include the legal descriptions of the dominant and subservient estates.

3. It has been subsequently discovered that the real property described on the attached Exhibit "A" is owned by both Wong Potatoes, Inc. and Wong Exchange MX061111, LLC, an Oregon limited liability company.

4. This amended Easement and Well Agreement is intended to replace, in it's entirety, the Agreement, to accurately reflect the legal descriptions of the dominant and subservient estate and to accurately reflect proper ownership of the real property described on the attached Exhibit "A" by Wong Potatoes, Inc and by Wong Exchange MX061111, LLC.

DATED: February 1, 2007

PARTIES:

Orem Land Company  
an Oregon Partnership  
C/O Gary Orem  
19980 Highway 50  
Merrill, OR 97633

("Orem")

Wong Potatoes, Inc.  
an Oregon Corporation  
C/O Daniel Chin  
17600 Highway 39  
Klamath Falls, OR 97603

("Wong")

AND

THIS DOCUMENT RERECORDED TO CORRECT LEGAL DESCRIPTION OF PARCEL 6

1. WELL AGREEMENT

40 RR  
61 -

Wong Exchange MX061111, LLC  
an Oregon Limited Liability Company  
C/O Cindi Poling  
JELD-WEN 1031, inc.  
15 Oregon Ave.  
Bend, OR 97701

**RECITALS:**

A. Wong owns real property located in Klamath County, Oregon, a description of which is on Exhibit "A" attached hereto and incorporated herein (hereinafter "the Wong property")

B. Orem owns real property located in Klamath County, Oregon, more particularly described on the attached Exhibit "B", (hereinafter "the Orem property").

C. In 2001 a well was drilled, a pump installed and irrigation water used from a well upon the Orem property. An oral agreement was entered into between Wong and Orem in which Orem has a sixty percent (60%) beneficial use of the well and Wong has a forty percent (40%) beneficial use of the well. The well has been, and will be used as an agricultural well to supplement irrigation for the Wong property and Orem property.

D. Orem intends to sell the Orem property to Sierra Cascade Nursery, Inc., a California corporation. Prior to the consummation of the sale, the oral agreement between Wong and Orem must be memorialized in a recorded document.

E. The existing well and distribution system located on the Orem property is equipped with a pump; a t-joint and pipes. The water then runs into the #11 lateral. The owners may then desire to run their part of the water into a different delivery system.

F. The Parties desire that this Agreement be properly recorded so as to appear in the chain of title to each parties' property and this Agreement be binding as to each parties' heirs, successors, assigns and grantees.

G. The Parties wish to further define their respective rights and obligations concerning said well.

**AGREEMENT**

NOW, THEREFORE for the mutual considerations contained herein, Orem and Wong agree as follows:

1. USE OF WELL. The Orem property shall have a sixty percent (60%) beneficial use of the well and the water drawn therefrom. The Wong property shall have a forty percent (40%) beneficial use of the well and the water drawn therefrom. Each party agrees that the use of

**2. WELL AGREEMENT**

the well shall be limited to agricultural use unless the parties agree otherwise.

2. COST OF REPAIR AND UPKEEP. Orem and Wong hereby agree and shall contribute in their proportional beneficial interest share of the well, those amounts necessary to repair, maintain, and upkeep said well and pump. Should any repairs or maintenance be necessary upon the well or its pump, each party shall contribute their proportionate beneficial share of the well towards said maintenance and repairs. If the well runs dry, caves in or suffers any other catastrophic and total loss of usefulness, either of the parties have the option of drilling a new well on their own respective property without right of contribution from the other party and without being required to share the produce of such a well with the other party. The parties are not required by this agreement to cooperate in any venture to establish another shared well, or to restore the existing well to its current condition if such a loss of the well occurs.

3. ACCESS. Orem hereby grants to Wong, his successors and assigns, an easement across the Orem property, upon constructed roads, access for inspection and repair of the well, pump and distribution system. Wong shall cause no damage to the Orem property when asserting this right. Wong has the right to come onto the Orem Property to start the well or to do maintenance for his 40% share of the same.

4. RECORDATION. Each party desires that this Agreement be properly recorded so as to appear in the chain of title to each party's respective property and that this Agreement will run with the land of each party and that this Agreement be binding as to each party's heirs, successors and assigns.

5. MISCELLANEOUS.

a. Venue. Should suit or action be instituted to enforce any terms or provisions of this Agreement, sole venue shall be in the Circuit Court for the state of Oregon for the County of Klamath. This Agreement shall be interpreted under the laws of the state of Oregon.

b. Attorney's Fees. If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney's fees at trial, on petition for review, and on appeal.

c. Notices. Should any notice required or permitted under this Agreement be given, it shall be effective when actually delivered or forty-eight (48) hours after deposit in the United States Mail as Certified Mail addressed to the address first given in this Agreement or to such other address as may be specified from time to time by either of the parties in writing.

d. Succession. This Agreement shall be binding on

3. WELL AGREEMENT

and inure to the benefit of the parties, their respective successors and assigns.

e. Recordation. This Agreement shall be recorded in the real property records of Klamath County, Oregon. The cost of recording this Agreement shall be borne equally between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first herein written.

OREM LAND COMPANY  
an Oregon Partnership

WONG POTATOES, INC.  
an Oregon Corporation

Gary Orem  
By: Gary Orem  
Its: General Partner

Daniel Chin  
By: Daniel Chin  
Its: President

WONG EXCHANGE MX061111, LLC  
an Oregon Limited Liability Co.

JELD-WEN 1031, inc., Sole member of  
Wong Exchange MX061111, LLC  
By: Cindi Poling  
Its: Assistant Secretary

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

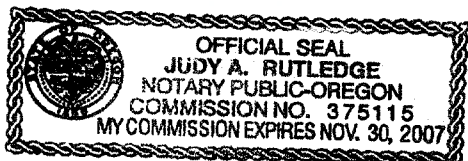
Personally appeared before me this 30 day of May 2007, the above-named Gary Orem, as General Partner of the Orem Land Company and acknowledged the foregoing instrument to be his voluntary act.



Karen A. Baker  
Notary Public for Oregon  
My Commission expires: 9/20/09

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

Personally appeared before me this 30 day of May 2007, the above-named Daniel Chin, as President of Wong Potatoes, Inc. and acknowledged the foregoing instrument to be his voluntary act.



Judy A. Rutledge  
Notary Public for Oregon  
My Commission expires: 11/30/07

4. WELL AGREEMENT

and inure to the benefit of the parties, their respective successors and assigns.

e. Recordation. This Agreement shall be recorded in the real property records of Klamath County, Oregon. The cost of recording this Agreement shall be borne equally between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first herein written.

OREM LAND COMPANY  
an Oregon Partnership

WONG POTATOES, INC.  
an Oregon Corporation

By: Gary Orem  
Its: General Partner

By: Daniel Chin  
Its: President

WONG EXCHANGE MX061111, LLC  
an Oregon Limited Liability Co.

Cindi Poling  
JELD-WEN 1031, inc., Sole member of  
Wong Exchange MX061111, LLC  
By: Cindi Poling  
Its: Assistant Secretary

STATE OF OREGON            )  
                                  ) ss.  
County of Klamath        )

Personally appeared before me this \_\_\_\_ day of May 2007, the above-named Gary Orem, as General Partner of the Orem Land Company and acknowledged the foregoing instrument to be his voluntary act.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

STATE OF OREGON            )  
                                  ) ss.  
County of Klamath        )

Personally appeared before me this \_\_\_\_ day of May 2007, the above-named Daniel Chin, as President of Wong Potatoes, Inc. and acknowledged the foregoing instrument to be his voluntary act.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

4. WELL AGREEMENT

STATE OF OREGON )

County of Jackson )

ss.

Personally appeared before me this 30<sup>th</sup> day of May 2007, the above-named Cindi Poling, as assistant secretary of JELD-WEN 1031, inc., sole member of Wong Exchange MX061111, LLC and acknowledged the foregoing instrument to be her voluntary act.



Shelly Knokey  
Notary Public for Oregon  
My Commission expires: Jan. 19, 2010

5. WELL AGREEMENT



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL 1**

The SW1/4 SE1/4 and that portion of Lot 7 (NW1/4 SE1/4), Section 10, Township 41 South, Range 11 East of the Willamette Meridian lying Southerly of the Great Northern Railway Right of Way.

All that portion of Government Lot 1 in Section 15, Township 41 South, Range 11 East of the Willamette Meridian, lying West of the East line of the SW1/4 of the SE1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, extended South to the South line of said Lot 1.

**PARCEL 2**

A portion of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Beginning at the one-quarter corner common to Section 9 and 10 of said Township and Range, thence South  $89^{\circ} 58'$  East 3.51 chains, more or less, to the projection of the center line of the 9-E-2 drain; thence South  $34^{\circ} 26'$  East along said center line 14.11 chains to its intersection with the North line of the S1/2 N1/2 SW1/4 of said Section 10; thence Easterly along said North line of S1/2 N1/2 SW1/4, 30.80 chains, more or less, to the East line of the SW1/4 of said Section 10; thence Northerly along the East line of the SW1/4 of said Section 10, 10 chains, more or less, to the Northeast corner of the NE1/4 SW1/4 of said Section 10; thence Westerly along the Northerly line of said NE1/4 SW1/4 to the intersection of the said Northerly line with the Southwesterly right of way line of the Great Northern Railway Company Railroad right of way; thence Northwesternly along said Southerly railroad right of way line to its intersection with the West line of said Section 10; thence Southerly along said West line of said Section 10 to the place of beginning.

EXCEPTING THEREFROM that portion described as follows: A triangular parcel of land located in the Northeast corner of the Northeast corner of the SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Commencing at the Northeast corner of the SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, extending thence West along the Northerly line of said SW1/4 366 feet, more or less, to the intersection of said line with the Northeasterly right of way line of the Great Northern Railway; thence Southeasterly along the Northeasterly right of way line of said Railway a distance of 399 feet, more or less, to the North-South center line of said Section 10; thence North along said center line a distance of 162 feet, more or less, to the point of beginning.

ALSO EXCEPTING THEREFROM a tract of land situated in the SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Beginning at the Northwest corner of the S1/2N1/2SW1/4 of said Section 10, thence East along the North line of said S1/2N1/2SW1/4 to the East line of the SW 1/4; thence North along said East line 164.0 feet; thence West parallel with the North line of said S1/2N1/2SW1/4 to the West line of the SW 1/4; thence South along said line 164.00 feet to the point of beginning.

PARCEL 3

A portion of Lot 5, Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Beginning at the one-quarter corner common to Section 9 and 10 of said Township and Range; thence South 89° 58' East 3.51 chains, more or less, to the projection of the center line of the 9-E-2-Drain; thence South 34° 26' East along the said center line 14.11 chains to its intersection with the North line of S1/2 N1/2 SW1/4 of said Section 10; thence West along said North line to the West line of said Section 10; thence North along said West line to the point of beginning.

EXCEPTING THEREFROM a tract of land situated in the SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Beginning at the Northwest corner of the S1/2N1/2SW1/4 of said Section 10, thence East along the North line of said S1/2N1/2SW1/4 to the East line of the SW 1/4; thence North along said East line 164.0 feet; thence West parallel with the North line of said S1/2N1/2SW1/4 to the West line of the SW 1/4; thence South along said line 164.00 feet to the point of beginning

PARCEL 4

A tract of land situated in Government Lot 5 in Section 15, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Being that portion of Government Lot 5 lying Northerly of the North right of way line (Easement Line) of the J Canal.

PARCEL 5

All that portion of Government Lot 5 in Section 15, Township 41, South Range 11 East of the Willamette Meridian, Klamath County, Oregon, lying Southerly of the North right-of-way line (easement line) of the J Canal.

PARCEL 6 \*See corrected legal below

~~All that portion of the W1/2 NW1/4 SE1/4 and all that portion of the SE1/4 SE1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, lying Southwesterly of the Burlington Northern Railroad right of way.~~

\*Corrected Legal

PARCEL 6:

All that portion of the W1/2 NE1/4 SE1/4, all that portion of the SE1/4 SE1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, lying Southwesterly of the Burlington Northern Railroad right of way, and that portion of Government Lot 1 in Section 15, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, lying Northerly of the 1881 G.L.O meander line and East of the West line of Government Lot 4 in said Section 15 extended North to the South line of Section 10.



EXHIBIT "B"

All the portion of the S1/2 NE1/4 SW1/4 of Section 10, Township 41 South, Range 11 East, Willamette Meridian, Klamath County, Oregon, lying East of the West line of the USBR 9-E-2 Drain if the West line of said drain were extended North to the North Line of said S1/2 NE1/4 SW1/4 of said Section 10.

Unofficial  
Copy