

MTC13910-89167
After recording, return to:

Robert S. Lovlien
P.O. Box 880
Bend, OR 97709

2007-015300

Klamath County, Oregon



08/29/2007 11:22:37 AM

Fee: \$41.00

123228

WELL USE, PAYMENT AND MAINTENANCE AGREEMENT

DATE: 8-20, 2007

PURPOSE: The parties listed below, desire to enter into this Agreement to provide for the use and maintenance of a domestic well to be located on Helmer's property and to share in the water obtained from that well for domestic purposes only.

PARTIES:

RICHARD HELMER and JAYNE HELMER, Trustees of the Richard and Jayne Helmer Revocable Trust, their heirs, successors and assigns, hereinafter referred to as "Owner – Lot 1", whose real property is described on Exhibit "A", attached hereto and by this reference incorporated herein.

RICHARD HELMER and JAYNE HELMER, Trustees of the Richard and Jayne Helmer Revocable Trust, their heirs, successors and assigns, hereinafter referred to as "Owner – Lot 2" whose real property is described on Exhibit "A", attached hereto and by this reference incorporated herein.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1. WELL AND RELATED EQUIPMENT: As used in this Agreement, unless the context clearly requires or indicates otherwise, the term "well" refers to the domestic well, cistern and well house, constructed and drilled on Helmer's property, including, but not limited to a submersible pump, pump enclosure, valves, pipes, electrical panel, wiring and water meters.

2. OWNERSHIP OF WELL AND WATER LINES: Owner – Lot 1 shall own the well described herein subject to an Easement in favor of the other parties to this Agreement for the repair and maintenance of the well and pump subject to the terms of this agreement. Each party shall be entitled to 50 percent interest in the well and shall be entitled to 50 percent of the output of the well for domestic purposes. Each party shall separately own the water lines leading from the well to said party's residences when such lines are installed, if not already.

Owner – Lot 1 is hereby further granted the easements and rights to install another well within a 250-foot radius of the existing well for the exclusive use by Lot 1. In the

1 – Well Agreement 14573-001 300.doc

BRYANT, LOVLIE & JARVIS, PC
ATTORNEYS AT LAW, ESTABLISHED 1915

591 SW Mill View Way PO Box 880 Bend, Oregon 97709-0880 (541) 382-4331 fax (541) 389-3386 WWW.BLJLAWYERS.COM

AMERITITLE has recorded this instrument by request as an accommodation 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.

courtesy

4/AMT

event such a well is installed Owner – Lot 1 shall be responsible for all expenses necessary for the well that is currently located on Lot 2. Owner – Lot 1 shall assume all responsibility for the maintenance, repair and operation of the new well to be constructed and installed. The easements granted herein shall survive.

3. REPAIR AND MAINTENANCE:

A. The parties shall share equally the cost of operating, maintaining, repairing and replacing the well in whole or in part as needed.

B. The well will not be separately metered. The parties agree on an initial annual fee of \$100.00. This fee can be amended from time to time upon the agreement of both parties.

C. Each party shall be solely responsible for and bear all cost of (1) installation, maintenance and repair of their water transmission line or lines taking the water from the well to such party's residences or special use areas; and (2) repair to the other parties lines (water, telephone, electrical, etc.) in the event one party damages the other's utility lines during installation or maintenance of their own utility lines.

4. WATER USAGE: The parties shall have joint use of the water obtained from the well for household and livestock purposes only and not for irrigation purposes. Household purposes shall include the right to irrigate shrubs and plants adjacent to any dwelling and lawn not to exceed 6,000 square feet. In the event of a shortage, each party shall be entitled to the percentage ownership of the available water based on the percentage of use each party shall be entitled to. Each party shall have a non-exclusive license to enter onto the other's property to inspect the well and electrical meter.

5. EASEMENTS: Owner – Lot 1 hereby grants to Owner – Lot 2, a permanent, non-exclusive easement appurtenant to their property across Owner – Lot 1's property, for the purposes of: (1) Underground piping of well water to their property; (2) Underground placement of power lines, if applicable, for their property; and, (3) Access to the well and to the buried water and power lines for service, maintenance, repair and replacement.

6. BREACH OF OBLIGATIONS: If either party fails or refuses, after thirty days' written notice, to pay any sum due under this Agreement, or fails to perform any other obligation to be performed under this Agreement, the non-breaching party shall be entitled to suspend easements and licenses granted to the breaching party herein until such payment or performance is made, or to require such payment or performance by suit for specific performance or, where appropriate, through injunctive relief. Such remedies shall be in addition to any other remedies afforded under Oregon law.

7. WELL MANAGER. Both parties agree to jointly assume all custodial duties for the care and proper maintenance of the well and appurtenant easements as referenced

above. The parties agree to share equally in all aspects in the performance of these custodial duties and to pay their prorata share of any costs incurred within 30 days.

8. ATTORNEY FEES: In the event of any litigation arising under this Agreement, the prevailing party shall recover from the losing party the prevailing party's reasonable attorney fees at trial or on appeal as adjudged by the trial or appellate court in addition to costs awarded the prevailing party by statute.

9. EFFECT OF THE AGREEMENT: The easements granted hereunder shall run with the land as to all property burdened and benefited by such easements. The rights, covenants and obligations contained in this agreement shall bind, burden and benefit each party's successors and assigns, lessees, mortgagees (or beneficiaries under a deed of trust). Upon transfer of a party's interest in its property, by deed or contract, such party shall be relieved of all personal liability for future performance of this Agreement.

10. NOTICES: Any notice required or permitted under this agreement shall be in writing and signed and deemed given when actually delivered or when deposited in the United States Mail as certified mail addressed to the party at the address indicated below such party's signature, or to such other address as may be specified from time to time by either of the parties in compliance with this provision.

11. WARRANTIES, REPRESENTATIONS AND COVENANTS: Each party warrants and represents to the other that such party has the right to enter into and perform this Agreement and covenants that such party shall not default in any obligations relating to any liens or encumbrances now or hereafter placed against such party's property so as to impair the other's rights under this Agreement.

12. ENTIRE AGREEMENT: This Agreement is the final and complete agreement of the parties with respect to the subject matter hereof, and all prior and contemporaneous agreements between the parties, both oral and written, are replaced by this agreement and such agreements are of no further force or effect. This Agreement may not be modified except in a writing signed and dated by the parties hereto.

13. CONSIDERATIONS: The true consideration for the rights and interests granted under this Agreement is the mutual promises contained herein.

14. MISCELLANEOUS: Execution of this Agreement shall act as a cancellation and termination of any prior well agreements appurtenant to the real property described above.

IN WITNESS WHEREOF, the parties have executed this Well Agreement the date and year first above written.

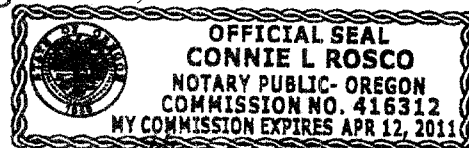
Richard Helmer Trustee
RICHARD HELMER, Trustee

Richard Helmer Trustee
RICHARD HELMER, Trustee

Jayne Helmer Trustee
JAYNE HELMER, Trustee

Jayne Helmer Trustee
JAYNE HELMER, Trustee

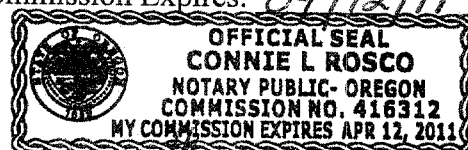
STATE OF OREGON, County of Deschutes, ss:



The foregoing instrument was acknowledged before me this 20 day of August, 2007, by Richard and Jayne Helmer, Trustees.

Connie L. Rosco
Notary Public for Oregon
My Commission Expires: 04/12/11

STATE OF OREGON, County of Deschutes, ss:



The foregoing instrument was acknowledged before me this 20 day of August, 2007, by Richard and Jayne Helmer, Trustees.

Connie L. Rosco
Notary Public for Oregon
My Commission Expires: 04/12/11

EXHIBIT "A"
Real Property Description

Lots 1 and 2, Block 14, RIVER PINE ESTATES, Klamath County, Oregon.

5 – Well Agreement 14573-001 300.doc

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