

2008-003661

Klamath County, Oregon



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03/24/2008 03:00:59 PM

Fee: \$46.00

After Recording Return to:

Jean Bingham

4421 Amy Avenue
Klamath Falls, OR 97603

15r 1179915

**DRIVEWAY EASEMENT
AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this 26th day of February, 2008, by and between Stanley and Kathleen Larson, hereinafter referred to collectively as Grantors, and Jean Bingham, hereinafter referred to as Grantee.

1. RECITALS

- 1.1 Grantors are the owners of that certain parcel of real property located in Klamath County, Oregon, more particularly described as being Lot 18 of "Summers Park" situated in the NE 1/4 of the SE 1/4 of Section 10, Township 39 South, Range 09 East of the Willamette Meridian, hereinafter referred to as the Larson Property.
- 1.2 Grantee is the owner of that certain parcel of real property located in Klamath County, Oregon, more particularly described as being Lot 19 of "Summers Park" situated in the NE 1/4 of the SE 1/4 of Section 10, Township 39 South, Range 09 East of the Willamette Meridian, hereinafter referred to as the Bingham Property.
- 1.3 Both the Larson and Bingham Properties have access to Bristol Avenue by way of a shared, existing driveway located on both properties.

2. CONSIDERATION

- 2.1 The consideration for Grantors' grant of the easement described below is the satisfaction of the commitment to grant such an easement for the benefit of the Bingham Property and the mutual covenants and agreements of the parties contained herein.

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Driveway Easement and Maintenance Agreement

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3. GRANT OF EASEMENT

- 3.1 Grantors hereby grant, assign and convey to Grantee, and to the heirs, successors and assigns of Grantee, a non-exclusive easement for road and utility purposes for the use in common with Grantors and others on, over, across and along that portion of the Larson Property, which is described in Exhibit A attached hereto and by this reference incorporated herein, hereinafter referred to as the Easement Property.

4. ROADWAY MAINTENANCE

- 4.1 The roadway located on the Easement Property shall be maintained in good condition and repair, free of large or deep holes, and passable in all weather by ordinary passenger vehicles. The roadway, which is currently paved, shall, unless all parties agree, be maintained as a paved driveway.
- 4.2.1 Each holder of a right to use the roadway shall share in the cost of maintaining the roadway in good condition and repair in proportion to the use made of the roadway in question by each holder of a right to use the roadway determined in accordance with ORS 105.175, including all future amendments thereto and re-codifications thereof.
- 4.2.2 The need for maintenance of the roadway shall be determined as follows. A party desiring that maintenance be done ("First Party") shall obtain a bid for the maintenance and shall notify the other holders of an easement interest in the roadway ("Second Parties") in writing of the location, extent and nature of the proposed work to be done and the estimated cost of the work. Any Second Party may object in writing to First Party within twenty (20) days after receipt of the notice. If no Second Party objects in nature and cost of the proposed work, First Party may proceed to have the work done at the estimated cost and Second Parties shall be obligated to pay their share of such cost. The reimbursement of First Party by Second Parties shall be paid upon demand. If the parties disagree as to the need for maintenance of the roadway, the appropriate cost for such maintenance, a party's proportionate share of the cost of such maintenance or otherwise relating to the maintenance of the roadway, all such disputes shall be resolved by arbitration.

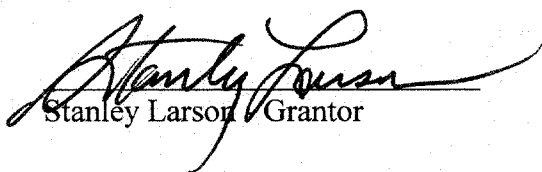
- 4.2.3 In the event that any party using the roadway causes or allows damage to the roadway by his or her negligence or by heavy hauling, construction, or other similar activity, that party shall promptly repair the roadway at her or her sole cost to a condition comparable to its condition immediately before the damage. Provisions of the Section 4.2.3 shall take precedence over any other provision in this agreement that is contrary to any provision of this section.

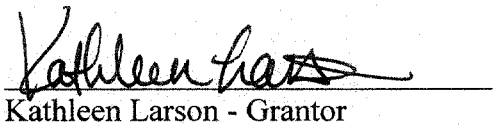
5. GENERAL TERMS OF EASEMENT

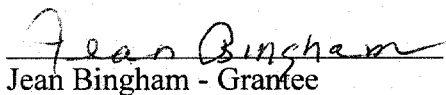
- 5.1 **Subject To.** This easement is granted subject to all prior easements and encumbrances.
- 5.2 **Binds Properties.** This easement shall be perpetual and appurtenant to both the Larson and Bingham Properties. The rights and easements granted hereby shall run with the land as to both the Larson Property and the Bingham Property, including any division or partition of either parcel. The rights, covenants and obligations contained in this agreement shall bind, burden and benefit each party's successors and assigns, lessees, mortgagees and beneficiaries under trust deed.
- 5.3 **Joint Use.** All persons entitled to use the easement shall cooperate during periods of joint use so that their use shall cause a minimum of interference to other person entitled to use the easement. Grantor and Grantees understand and agree that there shall be no permanent or long term parking of any vehicle or other object that would in any way be an encumbrance to the Easement.
- 5.4 **Indemnification.** Grantee hereby agrees to indemnify and defend Grantors from any loss, claim or liability to Grantors arising in any manner out of Grantee's use of the rights granted pursuant to this easement. Grantee assumes all risks arising from their use of the easement. Notwithstanding the foregoing, Grantee does not hereby agree to indemnify Grantors for, or assume all risks of, any traffic crashes that may occur on the easement between Grantors and Grantee. The responsibility for any such event shall be determined based upon the fault of the parties involved as provided by Oregon law.
- 5.5 **Construction.** In construing this agreement, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this agreement shall apply equally to individuals and to corporations and other entities.
- 5.6 **Arbitration.** Any controversy or claim arising out of or relating to this agreement including, without limitation, the making, performance or interpretation of this

agreement, shall be settled by binding arbitration. Unless otherwise agreed, the arbitration shall be conducted in Klamath County, Oregon, in accordance with the then current rules of the American Arbitration Association, or the current rules of a similar arbitration service which provides arbitration services in Klamath County, Oregon. The party first requesting arbitration may elect which arbitration service to use. The arbitration shall be held before a single arbitrator. The arbitrator shall be chosen from a panel of attorneys knowledgeable in the field of real estate law. If the arbitration is commenced, the parties agree to permit discovery proceedings of the type provided by the Oregon Rules of Civil Procedure both in advance of, and during the recesses of, the arbitration hearings.

5.7 **Attorney for Parties.** William Gourley, Attorney at Law, has represented Grantors in connection with the execution of this agreement. Review and approval of this agreement for the protection of the Grantee is the responsibility of the Grantee.


Stanley Larson - Grantor


Kathleen Larson - Grantor


Jean Bingham - Grantee

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STATE OF OREGON)
) ss.
County of Klamath)

SUBSCRIBED TO AND SWORN before me this 26th day of February, 2008, by Stanley Larson.

(NOTARY STAMP)

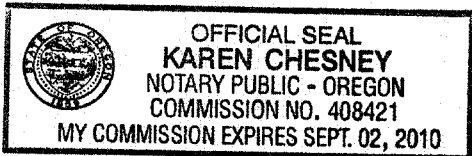


Karen Chesney
Notary Public for State of Oregon

My Commission Expires: 9/2/2010

SUBSCRIBED TO AND SWORN before me this 26th day of February, 2008, by Kathleen Larson.

(NOTARY STAMP)

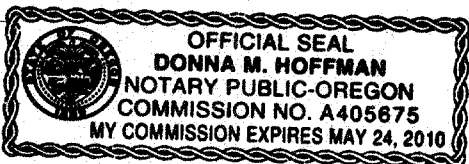


Karen Chesney
Notary Public for State of Oregon

My Commission Expires: 9-2-10

SUBSCRIBED TO AND SWORN before me this 27th day of February, 2008, by Jean Bingham.

(NOTARY STAMP)



Donna M. Hoffman
Notary Public for State of Oregon

My Commission Expires: 5-24-10

TRU SURVEYING, INC. LINE

2333 SUMMERS LANE
KLAMATH FALLS, OREGON 97603
PHONE: (541) 884-3691

DENNIS A ENSOR O.L.S

JOHN HEATON L.S.I.T.

EXHIBIT A

October 23, 2007
Legal Description of Access Easement

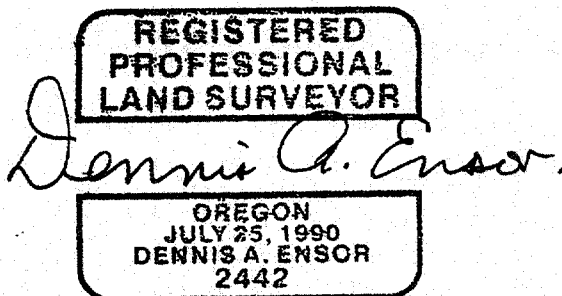
A strip of land being a portion of lot 18 of "Summers Park" situated in NE1/4 of the SE1/4 of section 10, T39S, R09EWM, Klamath County, Oregon, being more particularly described as follows:

Beginning at the Southeast corner of lot 19 in said subdivision; thence along the southerly line of said lot a distance of 33.54 feet; thence leaving said line S43°24'30"E a distance of 3.50 feet; thence N47°54'23"E a distance of 33.13 feet to the right of way line of Bristol Avenue; thence 4.28 feet along the arc of a 70.00 foot radius curve to right (the long chord which bears N37°48'02"W a distance of 4.28 feet, to the point of beginning. Basis of Bearings based upon "Summer Park" Subdivision.

Containing approximately 129 square feet, more or less.

Dennis A. Ensor

DENNIS A. ENSOR O.L.S. 2442



EXPIRES 12/31/07