

2010-008297

Klamath County, Oregon



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07/09/2010 02:56:21 PM

Fee: \$67.00

**SHARED WELL AGREEMENT
AND EASEMENT**

THIS INSTRUMENT is entered into this 6th day of July, 2010, by and between Bong-Gat-Wong, Trustee of #24 Quincy Trust, hereinafter referred to as the "Supplying Party" and Michael Menefee, hereinafter referred to as the "Supplied Party."

Recitals

A. Supplying Party is the owner of the following described real property located in Klamath County, Oregon, hereinafter referred to as "Parcel 1:"

Lot six (6) and East half of Lot Seven (7), Block Two (2), RIVERSIDE ADDITION to Keno, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon

B. Supplied Party is the owner of the following described real property located in Klamath County, Oregon, hereinafter referred to as "Parcel 2:"

Lot Five (5), Block Two (2), RIVERSIDE ADDITION to Keno, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon

C. Supplying Party has drilled a water well on Parcel 1 and has historically shared the costs and expenses of constructing and installing the well, casing, pump and motor with the Supplied Party.

D. The Parties desire to enter into a written agreement as to the future use, maintenance and repair of said well, casing, pump, motor, pump house and all related things commonly used for use of the well water. In addition, the Parties desire to enter into an agreement granting mutual easements over and across each of their properties to allow access to the water from said well and to perform maintenance, replacement and repair on the items described above.

E. The Parties desire this Agreement to benefit and bind their future heirs, executors and assigns and to, thus, run with the transfer of the real property (Parcels 1 and 2) described above.

Agreement

For and in consideration of the reciprocal covenants and agreements contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Supplying Party grants onto Supplied Party, for the use and purpose of accessing and conveying water from the well described above, a perpetual easement over and across a strip of land 4 feet in width, the center line of such strip of land beginning at the well and extending generally in a southeasterly direction to the residence on Parcel 2, as shown on Exhibit 1. Said grant shall include the perpetual right

of Supplied Party to reasonable ingress and egress to Parcel 1 for purposes relating to well use, maintenance, replacement and repair. Supplied Party shall be responsible for any repairs or restoration necessitated on Parcel 1 due to Supplied Party's access and/or use of said well (including but not limited to fence repair or replacement.)

2. Supplying Party grants unto Supplied Party the perpetual right to use the water from said well for the purposes as set forth herein and for no other purpose provided that Supplied Party complies with all of the covenants set forth herein.

3. Supplying Party and Supplied Party hereby covenant with one another that they, their heirs, executors and assigns will share equally in the costs of repair, replacement and maintenance of the well, casing, pump, motor, pump house, filters, valves, pipes, generator, power service equipment and all related items needed for pumping water from the well. Payment of any such expense shall be made promptly upon billing. Time is of the essence of this Agreement.

4. Each Party shall repair, replace and maintain, at their own expense, the water line flowing from the well to their respective residences or other such location upon their lot where the well water is permitted to be used. Each Party shall be solely responsible for the cost, installation, maintenance, replacement and repair of any and all facilities, parts and equipment necessary for supplying the water to that Party's real property as described above. All repairs, replacements and maintenance required under this Agreement shall be done in a timely and workmanlike manner by the Party responsible under this Agreement.

5. Each Party covenants and agrees with the other that the water from the well shall be limited to that quantity that can be beneficially used for residential domestic purposes only, which shall include providing of water to the yard area (family garden, flowers, residential landscaping and lawn) immediately surrounding the residence located on each lot. Under no circumstances shall the water be used for irrigation of the pasture, crops, watering livestock, or for any other agricultural use.

6. The Parties agree to pay 1/2 each of the power bill related to electrical service utilized by the well, pump and generator. Payment by Supplied Party shall be made immediately upon receipt of billing from Supplying Party.

7. Each Party covenants and agrees that the water from the well will only be used for one single family residence (dwelling) located upon each lot. The Parties agree that the respective parcels of real property set forth above shall not be further subdivided by either Party nor any of their heirs, executors or assigns without the express prior written permission of the other Party.

8. The Parties mutually agree and covenant that their use of the water from the well shall be exclusively for the real property and the purposes described herein. Neither Party shall enter into any agreement nor shall any Party consent to nor allow any proceeding or action that would give any third party any interest whatsoever in the well and the water produced therefrom without the prior express written consent of the other Party having been first obtained.

9. In the event the referenced well shall become contaminated and/or shall no longer supply water suitable for domestic consumption, or shall no longer supply water adequate for the needs of all relevant parties, or in the event that another source of water shall become available to the respective parcels, then the rights and obligations of the Parties created by this Agreement shall cease and terminate. Provided, that upon the availability of such other source of water, it is contemplated that a reasonable time shall be

allowed to effectuate the necessary connections to the new source. Should one of the events described herein occur, both parties agree for themselves, their successors and assigns, to jointly sign an agreement terminating this easement.

10. In no event shall any liability accrue against Supplying Party, its officers, agents and employees for any damage, direct or indirect, arising from any failure to deliver water under the terms of this Agreement as a result of shortage of available water supply, for any reason or cause, contamination of the subject well, or mechanical breakdown or failure of the water supply system.

11. The Parties to this Agreement mutually covenant and agree that they will not release any pesticides, herbicides, chemicals or other wastes, directly or indirectly, onto the area around the well site which may lead to the contamination or pollution of the subject well. Supplied Party, on behalf of themselves and their successors in interest, release Supplying Party from every claim for damages, direct or indirect, arising by reason of the release of water from said well, equipment and/or pipeline onto or into their land.

12. In the event that any payment to be made by Supplied Party (provided for in this Agreement) remains unpaid for a period of twenty (20) days, the Supplying Party may terminate the supply of water to the Supplied Party owing Supplying Party a payment until all arrearages in his payments are received by the Supplying Party.

13. Each Party shall have the right to act to correct an emergency situation and shall have access to the pertinent parcel in the absence of the other. An emergency situation shall be defined as the failure of any shared portion of the system to deliver water upon demand.

14. In the event that an action is commenced by either Party to enforce or construe any material provision of this Agreement, or because of a claim of breach or default by the other Party of any material obligation required of the other Party under the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party his or her costs and disbursements, including reasonable attorney's fees, incurred in prosecuting or defending against such action, in addition to any other relief granted by the court, whether in trial court or on appeal.

15. This Agreement shall insure to the benefit of, and be binding upon, the Parties hereto and their respective heirs, transferees, assigns, successors, administrators and personal representative. The easements and covenants granted herein shall run with and be appurtenant to both parcels of land.

16. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

IN WITNESS WHEREOF, each Party has executed this agreement as of the date hereinbefore set forth, and each Party acknowledges that such execution is his or her free act and deed.

KLAMATH EAGLE PRESERVATION TRUST
Bong Gat Ding, Trustee
B. Trustee

SHARED WELL AGREEMENT AND EASEMENT

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_____, Trustee



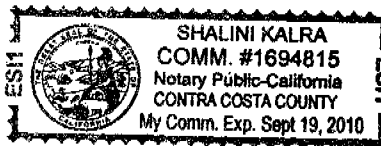
Michael Menefee

STATE OF CALIFORNIA

) ss

County of SAN MATEO

On this 6th day of JULY, 2010, before me personally appeared
MICHAEL MENESEE and acknowledged the foregoing instrument to be his voluntary act and deed.



Shalini Kalra
NOTARY PUBLIC FOR
My Commission Expires: 9-19-10

STATE OF OREGON)

) ss

County of:)

On this ____ day of _____, 2010, before me personally appeared
_____ and acknowledged the foregoing instrument to be his voluntary act and deed.

NOTARY PUBLIC FOR

My Commission Expires: _____

AFTER RECORDING PLEASE RETURN TO:

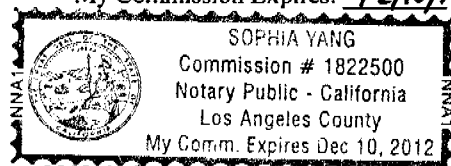
James R. Uerlings
Boivin, Uerlings & Dilaconi, P.C.
803 Main Street, Ste 201
Klamath Falls, OR 97601

STATE OF CA)
) ss
County of LA)

On this 6 day of July, 2010, before me personally appeared
Bong Gat Wong and acknowledged the foregoing instrument to be his voluntary act and deed.

[Signature]
NOTARY PUBLIC FOR CA
My Commission Expires: 12/10/12

STATE OF OREGON)
) ss
County of i)



On this _____ day of _____, 2010, before me personally appeared
_____ and acknowledged the foregoing instrument to be his voluntary act and deed.

NOTARY PUBLIC FOR
My Commission Expires: _____

AFTER RECORDING PLEASE RETURN TO:
James R. Uerlings
Boivin, Uerlings & Dilaconi, P.C.
803 Main Street, Ste 201
Klamath Falls, OR 97601