

2010-011592

Klamath County, Oregon



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09/30/2010 03:14:39 PM

Fee: \$57.00

AFTER RECORDING, RETURN TO:

William M. Ganong
Attorney at Law
514 Walnut Avenue
Klamath Falls OR 97601

1st 1276340

EASEMENT AND ROAD USE AGREEMENT

THIS AGREEMENT is made effective on the 24 day of ^{September}~~August~~, 2010, by and between William E. Ray, Sr. and Karen M. Ray, husband and wife, Grantors, and William Diekmann and Susan Diekmann, husband and wife, Grantees.

RECITALS:

A. Grantors own land located in Government Lots 3 and 4 of Section 7, Township 35 South, Range 7 E., W.M., Klamath County, Oregon, more particularly described on the Deed recorded in Volume M93 at Page 8952 of the Deed records of Klamath County, Oregon;

B. Grantees own 4.44 acres of land located in the NE¹/₄NW¹/₄ of Section 7, Township 35 South, Range 7 E., W.M., Klamath County, Oregon, which is improved with a single-family residence, more particularly described on Exhibit A attached hereto and incorporated herein by this reference;

C. Grantees desire to obtain an easement for ingress and egress across the southerly 30 feet of Grantors' land, as more particularly described below, and

D. Grantors are willing to grant an easement to Grantees on the terms and conditions provided in this Agreement.

WITNESSETH-

1. In consideration for the payment of \$6,500, Grantors grant and convey to Grantees a perpetual, mutual easement on and across a strip of land 30 feet in width along the South boundary line of Grantors' land described above.

2. This easement shall be used for vehicular and pedestrian ingress and egress purposes by the parties to this Agreement. No party shall have the right to park, load, or unload any vehicle in the right of way other than during routine maintenance on the right of way or under emergency conditions. Use of the easement shall be on a regular,

continuous, nonexclusive, non-priority basis, benefiting the parties, their successors, assigns, lessees, mortgagees, invitees, guests, customers, agents, and employees. However, no party's rights hereunder shall lapse in the event of that party's failure to use the easement on a continuous basis.

3. The Grantors have improved the road located on the easement. They have graded a road bed approximately 12 feet wide; added, graded, and compacted gravel 4 inches deep; and provided reasonable drainage along the edges of said roadway. Until the parties by unanimous agreement agree otherwise, the above description of the road shall be the standard to which the road is maintained. Grantors shall maintain the easement road in good condition. Grantors shall add any gravel reasonably required to fill potholes and grade the road periodically. Grantors will not be responsible for adding any dust control additive or taking other action to control dust. In the event it is necessary to plow snow from the roadway to provide reasonable access to the land owned by the parties, then Grantors agree to promptly provide such snow removal.

4. The annual maintenance and snow removal costs shall be shared and paid by the parties as provided in ORS 105.175 and 105.180. Periodically, Grantors shall provide a statement to Grantees detailing the costs incurred by them. Grantees shall pay their share of such costs to Grantors within 30 days after said notice is provided to them. Labor and equipment costs, if any, provided by Grantor or Grantee shall be agreed to in advance of the performance of work or shall not be recoverable.

5. In the event a party or a party's guest, tenant, or invitee shall cause unnecessary damage to the road or drainage improvement, such party shall be solely liable for the cost of repairing such damages

6. Except for snow removal, in the event Grantors fail to perform the regular and necessary maintenance and repairs as described above, Grantees, following fifteen days prior written notice Grantors, may cause such work to be done with a right of reimbursement for a proportionate share of all sums necessary and properly expended to remedy such failure. In the case of snow removal, Grantees shall have the right without notice to Grantor to remove snow at anytime Grantor has not removed said snow, and shall have the right to reimbursement as stated above

7. If the roadway becomes impassable or ingress and egress is unreasonably impaired or curtailed because of a party's failure to repair the roadway as required herein or because a party blocks or interferes with the use of the roadway or because party's use of the roadway causes damage to the roadway, the other parties, by this Agreement, may demand by written notice that remedial work be performed by the defaulting party immediately. If such work is not so performed, the other parties shall have the right of cure and reimbursement as set forth above.

Grantors have constructed a golf course on a portion of their land lying easterly of the easement road. In order to protect the golf course and other land of the parties from

livestock running at large and from trespassers, Grantors shall install and maintain a gate across the easement road at a point approximately ten feet west of the easterly terminus of the Easement. Grantees shall not open the gate or use that portion of the easement road lying Easterly of the gate without first obtaining Grantors written permission. Emergency personnel shall have access through the gate.

9. Any notice under this Easement shall be in writing and shall be effective when actually delivered in person or three (3) days after being deposited in the U.S. mail, registered or certified, return receipt requested, postage prepaid, and addressed to the party at the address stated in this Easement or such other address as either party may designate by written notice to the other.

The initial addresses of the parties for service of notice are:

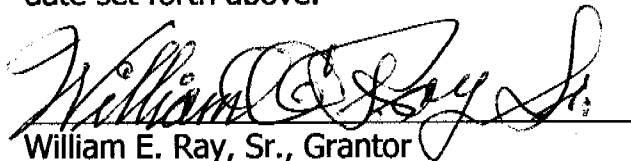
Mr. and Mrs. William E. Ray
36789 Agency Lake Loop Road
Chiloquin, OR 97624

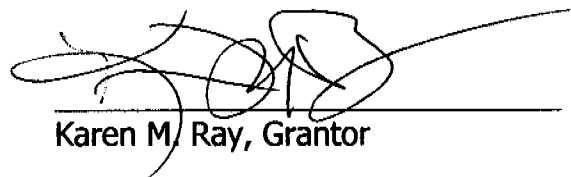
Mr. and Mrs. William Diekmann
2402 Running Springs Lane
Spring Garden, CA 95971

10. 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's fees at trial or on appeal, as adjudged by the trial or appellate court.

11. The easement and obligations granted hereunder shall run with the land as to all property burdened and benefited by such easement, including any division or partition of such property. 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 any Trust Deed.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.


William E. Ray, Sr., Grantor

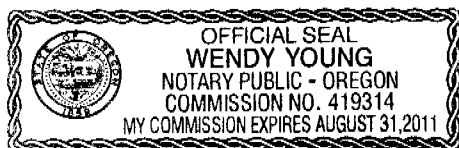

Karen M. Ray, Grantor


William Diekmann, Grantee


Susan Diekmann, Grantee

STATE OF OREGON)
) ss.
County of Klamath)

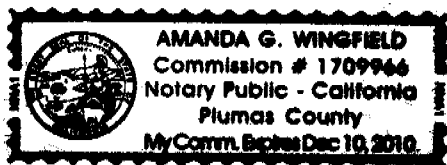
Personally appeared before me this 2nd day of September, 2010 the above-named William E. Ray, Sr. and Karen M. Ray and acknowledged the foregoing instrument to be their voluntary act and deed.



Wendy Young
Notary Public for Oregon
My Commission expires: 8.31.2011

STATE OF OREGON) California
) ss.
County of ~~Klamath~~) Plumas

Personally appeared before me this 24th day of September, 2010 the above-named William Diekmann and Susan Diekmann and acknowledged the foregoing instrument to be their voluntary act and deed.



Amanda G. Wingfield
Notary Public for Oregon California
My Commission expires: 12/10/10

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MAY-13-03 01:18PM FROM-FATCO Klamath Falls

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T-060 P.004/004 F-985

APN: R230468

Statutory Special Warranty Deed
- continued

File No.: 7021-182335 (SAC)
Date: 04/25/2003

EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

A tract of land situated in Lot 4, Section 7, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at the Southeast corner of said Lot 4; thence North along the East line of said lot, 606.5 feet; thence West 319.10 feet; thence South parallel to the East line of said lot, 606.5 feet to the South line of said lot; thence East along said line 319.10 feet to the point of beginning.

PARCEL 2:

An undivided 1/40 th interest in and to the following:

That portion of Section 6, Township 35 South, Range 7 E.W.M., Klamath County, Oregon, described as follows:

Beginning at a point on the West right of way line of the Old Dalles California Highway (State Highway No. 427) 10 feet Southerly along said West right of way line from the intersection of the South line of Lot 3, Section 6, Twp. 35 S., R. 7 E.W.M., and said West right of way line; said point of beginning being the Southeasterly corner of a parcel of land described in a deed recorded in Volume 343, page 229, Deed records of Klamath County, Oregon, thence Southerly along the said West right of way line a distance of 90 feet to a point; thence Westerly and parallel with the Southerly line of said Lot 3 to the Easterly shoreline of Agency Lake; thence Northerly along the said Easterly shoreline to the Southwest corner of said parcel of land described in Volume 343, page 229, Deed records of Klamath County, Oregon; thence Easterly along the Southerly boundary of said parcel so described to the point of beginning.