



00103153201100070880040043

06/09/2011 03:38:04 PM

Fee: \$52.00

Returned to County

This Agreement made the date hereafter written between ROBERT D. WHITE and MARLENE G. WHITE, husband and wife, hereafter called Whites, and R.H. NELSON and VIVIAN L. NELSON, husband and wife, hereafter called Nelsons.

WITNESSETH:

1.

Whites own the following described real property, to-wit:

A tract of land in the northeast quarter of the northeast quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Thirty-five (35), Township 40 South; Range Ten (10 East, Willamette Meridian, County of Klamath, State of Oregon; said tract of land being that portion of the real property described in the deed from Laura A. Hill, et al., to the United States of America dated February 28, 1935, and recorded May 17, 1935, in Volume 104 at page 548 of the official records of said County, and described as follows:

Beginning at a point on the east boundary of said Section 35 distant South 0°21' West 286.7 feet from the northeast corner of said section; thence from said point of beginning and continuing along said east boundary South 0°21' West 937.6 feet; thence leaving said east boundary along the northerly boundary of no. 7 Drain referred to in said deed to the United States of America the following three (3) courses: (1) North 9°43' West 56.6 feet; (2) North 27°56' West 389.5 feet; and (3) North 69°49' West 141.2 feet to the westerly boundary of said deed to the United States of America; thence along said westerly boundary north 31°32' East 573.8 feet; thence East 30.7 feet to the point of beginning, containing an area of 3.1 acres, more or less.

upon which there is now situated a domestic water well.

2.

Nelsons own the following real property, to-wit:

All that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, Twp. 40 S., Range 10 East, W.M., lying and being North of the United States main irrigation canal right of way; and also the following described tract and portion of the said NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 36, to-wit; beginning at the intersection of the section line between Sections 35 and 36 in said Township and the right of way line on the south side of said canal, thence south on the said section line 305.5 feet; thence East 714 feet, thence north to the said south right of way line of said canal; thence westerly along said right of way line to the point of beginning, LESS that portion deeded to Little Klamath Ditch Company, a corporation, by Chas. S. Moore, et ux, by deed dated May 16, 1906, and recorded June 25, 1906, in Deed Volume 20 at page 290 of Records of Klamath County, Oregon, and LESS that portion deeded to the United States of America by H.S. Parrish, et ux, by deed dated November 12, 1908, and recorded November 16, 1908, in Deed Volume 25 at page 214 of Records of Klamath county, Oregon, and LESS that portion deeded to the United States of America by H. S. Parrish, et ux, by deed dated March 31, 1909, and recorded April 5, 1909, in Deed volume 26 at page 85 of Records of Klamath County, Oregon, and LESS that portion conveyed to the United States of America by Charles E. Craig and Louanna Craig, his wife, by deed dated December 21, 1926, and recorded June 9, 1927, in Deed Volume 75 at page 542, Records of Klamath County, Oregon.

Nelsons reside on their said property and are currently supplying domestic water to their said property from the well located on the Whites' property. Nelsons desire to acquire an easement across Whites' property to said well for the purpose of maintaining and replacing the pipe line which provides water to Nelsons' residence and for the purpose of maintaining said well, the pump located at the well and the other equipment necessary to the water delivery system.

3.

Whites, in consideration of one dollar and other valuable consideration, do hereby give and grant to Nelsons, their heirs, grantees and assigns, the perpetual right and easement to maintain, repair and replace the components of the domestic water well located on the Whites' above described land, and to maintain, repair and replace the existing pipe line which supplies water from said well to Nelsons' said residence. Said right and easement are granted on the following terms and conditions which are declared of the essence of this Agreement:

(a) Whites, their heirs, grantees and assigns, right to the use of said well shall always be superior to the rights of Nelsons and their heirs, grantees and assigns, and if for any reason whatsoever at any time, said well shall supply and furnish insufficient water to adequately supply domestic household water for both Whites' and Nelsons' said residences, Nelsons' use of said well shall be curtailed to the extent necessary to provide Whites' said residence with adequate water.

(b) Nelsons, their heirs, grantees and assigns, shall be solely responsible for the installation, maintenance, repair and replacement of the pipeline and equipment, which services their said property and shall repair or pay for at their sole expense, any damage done to Whites' said premises in such installation, repair and replacement.

(c) Nelsons, their heirs, grantees and assigns shall hold Whites, their heirs, grantees and assigns, harmless from and indemnify them from any and all loss, damages or claims arising or resulting, in whole or part, from the use of the easement herein granted.

(d) Nelsons, their heirs, grantees and assigns, shall repair or pay for at their sole expense all costs of maintenance, repair, replacement and improvement of the well, casing, pump and other equipment located at the well.

Provided, however, that if Whites, their heirs, grantees and assigns begin to use water from said well for their own uses, then thereafter the costs of maintaining and repairing the well, casing, pump and other equipment which serves both the property owned by Whites and the property owned by Nelsons shall be paid one-half by Whites, their successors and assigns, and one-half by Nelsons or their successors and assigns. Notwithstanding any provisions herein to the contrary, the Whites shall have no duty or liability for improvements to the well or well equipment that might be necessary in order to provide adequate water to both parcels of property described hereinabove.

This Agreement shall constitute a lien against the property of Nelsons described in paragraph 2, above, for the amount of the costs which Nelsons, their successors and assigns are required to pay pursuant to the terms of this Agreement, including costs of suit and attorneys fees. Said lien may be enforced in the manner provided by Oregon law for the enforcement of construction liens. The lien created hereby may be released by the Nelsons or their successors in interest executing and recording a release of the Easement and all rights granted to them by this Agreement.

4.

It is mutually covenanted and agreed by all of the parties herein on behalf of themselves and their respective heirs, grantees and assigns, that in the event that any owner of either of said parcels of land shall at any time hereafter institute any suit, action or proceeding to enforce any of the ~~covenants or agreements herein contained and/or for damages for the breach of~~ the same that the Courts, including Appellate Courts, shall award the prevailing party in such a suit, action or proceeding such sums as it shall adjudge reasonable for said prevailing party's attorney's fees therein, in addition to the costs and disbursements provided by law.

5.

This Agreement shall bind and inure to each of said parcels of land and be appurtenant thereto and run therewith.

IN WITNESS WHEREOF, the parties have executed this Agreement this 5th day of August, 1987.

Robert D. White
Robert D. White

R. H. Nelson
R. H. Nelson

Marlene G. White
Marlene G. White

Vivian L. Nelson
Vivian L. Nelson

STATE OF OREGON)
)ss
County of Klamath)

August 5th, 1987.

Personally appeared the above named Robert D. White and Marlene G. White, and acknowledged the foregoing instrument to be their voluntary act and deed.

BEFORE ME:



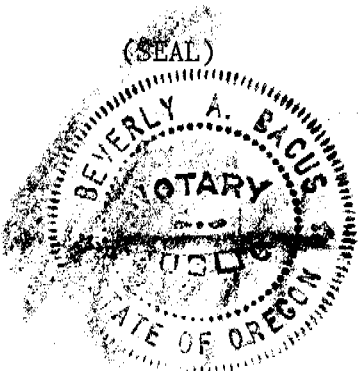
William M. Young
Notary Public for Oregon
My commission expires: 11-2-90

STATE OF OREGON)
)ss
County of Klamath)

August 20th, 1987.

Personally appeared the above named R. H. Nelson and Vivian L. Nelson, and acknowledged the foregoing instrument to be their voluntary act and deed.
BEFORE ME:

(SEAL)



Beverly A. Bacus
Notary Public for Oregon
My commission expires: 2-1-90