

2011-013214

Klamath County, Oregon



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11/29/2011 11:55:59 AM

Fee: \$47.00

AGREEMENT FOR JOINT USE OF WELL

THIS AGREEMENT, made and entered into this 20th day of OCT., 2011, by and between WILLIAM D. LEAVENS and EILEEN COLE LEAVENS (hereinafter "Well Owners") and WILLIAM D. LEAVENS and EILEEN COLE LEAVENS (hereinafter "Well Users"),

WITNESSETH:

WHEREAS, Well Owners have drilled a well upon Lot 5 of Block 1, of MOUNTAIN LAKE HOMESITES, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon (hereinafter the "Well"), and,

WHEREAS, Well Users are purchasing Parcels 2 and 3 of Land Partition 26-08, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, as No. 2011-013213, and intend to construct a pipe line to carry water from the Well to such parcels of land, and

WHEREAS, the parties desire to create an agreement for joint use and maintenance of the Well and the water produced thereby, and

NOW, THEREFORE, for and in consideration of the mutual and dependent covenants herein contained the parties agree as follows:

1. Use of Well: The parties agree that each party shall have the right to access the Well (pump and related equipment) for purpose of obtaining water for use upon the land owned by a party, including the property owned by Well Owners and Well Users. The parties agree that the parties have a right to equal use and benefit of the water produced by the Well. The parties agree that the primary use for which the well may be used is "domestic use". Domestic use is defined as supplying water to residences, or dwellings, located, or to be located, on the properties benefited by the Well. If the Well does not produce sufficient water to satisfy all domestic use being made, then the water from the well shall not be used for purposes of irrigation, other than irrigation of lawn and plantings near the location of the residence or dwelling.

2. Sharing of Expense: The parties agree that Well Users shall bear all of the expense of construction and repair of the pipe line to be constructed between the Well and the property of Well Users (Parcels 2 & 3 of Land Partition 26-08). The parties shall share equally the expense of obtaining and installing the pump, pump house, electrical hookup, and other expenses reasonable and necessary in order to maintain the Well and pump house in good working condition. It may be that Well Owners will not be using the Well for purpose of obtaining water until such time as some improvements are constructed upon their property (Said Lot 5 of Block 1, of Mountain Lake Homesites), and therefore they shall not be obligated to pay for any of the electricity used in operation of the pump until such time as they, or their successors in interest, do begin to use water from the Well. The owners of Parcels 2 and/or 3 of Land Partition 26-08 may develop wells upon such Parcels, and if they do, they may cease to use water from the Well, and in such case shall not bear any of the cost of electricity, repairs and maintenance of the Well, pump, pipelines, and other equipment. If an owner of either Parcel 2 or 3 desires to discontinue use of the Well, and be relieved of the obligation to share expense, such owner may do so upon giving written notice to discontinue use to the owners of record of the other benefited properties, and then the right to use the Well, and obligation to share the expense, shall terminate effective the date of the giving of such notice to discontinue.

3. Binding upon Successors and Assigns: The parties intent that this agreement be binding upon successors and assigns of the parties, and bind the properties owned by each of them to the terms and conditions of this agreement, in perpetuity, and that the covenants made in this agreement be appurtenant to the properties of the parties and run with the land, and each party hereby conveys to the other the right to the joint use of the Well, subject to the responsibilities for sharing the costs and expense thereof as spelled out in this agreement.

4. Remedies: The parties shall have available to them in enforcement of the terms and conditions of this agreement all of the remedies available under the laws of the State of Oregon. The parties shall also have available the remedy of specific performance of the terms and conditions of this agreement, and they agree that money damages are inadequate to compensate a party in case of breach of this agreement.

5. Covenant to Cooperate: Each party agrees to execute and deliver to the other parties any and all documents that may hereafter be necessary to carry into full force and effect the intent of the parties in making this agreement.

6. Governing law: This agreement shall be construed in accordance with and governed by the laws of the State of Oregon.

7. Attorney Fees: In the event suit or action is instituted to enforce this agreement, or to enforce any of the terms or conditions hereof, the prevailing

party shall be entitled to such sums, as the court may adjudge reasonable as attorneys' fees in said suit or action.

In the event of an appeal from a judgment or decree in any suit or action necessary to enforce this agreement, or any of the terms or conditions hereof,

the prevailing party shall be entitled to sums as the court may adjudge reasonable as attorneys' fees in such an appeal.

IN WITNESS WHEREOF, the parties have made and executed this agreement on the date first hereinabove written.

William D. Leavens
William D. Leavens

Eileen Cole Leavens
Eileen Cole Leavens

STATE OF OREGON)

Klamath ss.
County of ~~Jackson~~

On the 20 day of October, 2011, personally appeared William D. Leavens and Eileen Cole Leavens and acknowledged the foregoing Deed of Easement to be their voluntary act and deed.

Before me:

Brenda P. Rodriguez
Notary Public for Oregon

