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After recording, return to:

Robert & Lisa Ely  
1825 Chedester Road  
Toledo, OR 97390

This Space Re

**2017-013106**

**Klamath County, Oregon**

**11/13/2017 03:44:24 PM**

**Fee: \$92.00**

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## **ASSIGNMENT OF JOINT USE AND MAINTENANCE AND WATER WELL AGREEMENTS**

<b>PARTIES:</b> Larry and Michele Thorp ("Thorp")	Robert and Lisa Ely ("Ely")
36910 Edgehill Road	1825 Chedester Road
Springfield, Oregon 97478	Toledo, Oregon 97391

### **RECITALS:**

- A. Thorp owns and undivided one half interest in a cabin and related improvements and the furnishings, fixtures, appliances, dishes, utensils and linens in the cabin and the dock located on Crescent Lake (collectively the "Cabin") on Lot 61 (the "Lot") also known as 24946 Crescent Lake Highway at Crescent Lake, Klamath County, Oregon 97733. The Lot is owned by the United States Forest Service and is leased to John and Judy Svoboda ("Svoboda") as a recreational home site under an agreement between the Forest Service and Svoboda dated January 15, 2009.
- B. Thorp's ownership interest in and right to use the Cabin and Lot are all described and memorialized in a Joint Use and Maintenance Agreement (the "Agreement") dated July 2, 2014. A copy of the Agreement is attached hereto, marked Attachment A and is incorporated herein by reference.
- C. Thorp and Ely have entered into a Residential Real Estate Sale Agreement number 2017818DW (the "Sale Agreement") under which Thorp and Ely have agreed that Thorp will sell and Ely will purchase Thorp's interest in the Cabin and Ely will acquire Thorp's rights and obligations under the Agreement. On closing the sale Thorp will convey Thorp's interest in the Cabin to Ely under a separate bill of sale (the "Bill of Sale"). Thorp and Ely have entered into this Assignment to concurrently transfer Thorp's rights and obligations under the Agreement to Ely.

Return To:



## TERMS:

1. ASSIGNMENT: Thorp hereby assigns all of Thorp's rights and obligations under the Agreement to Ely without representation or recourse except that Thorp warrants that Thorp is the owner of an undivided one half interest in the Cabin and has all of the rights and obligations with respect to such undivided interest described the Agreement. Thorp will save harmless, defend and indemnify Ely from any claim or obligation accruing or arising under the Agreement prior to the date of transfer of the Cabin under the Bill of Sale. Ely hereby assumes all of Thorp's rights and obligations under the Agreement as of such date and will save harmless, defend and indemnify Thorp for any claims or obligations accruing or arising under the Agreement after the date of the transfer of Thorp's interest in the cabin to Ely under the Bill of Sale.

2. WATER WELL AGREEMENT: Thorp and Svoboda entered into a Water Well Agreement dated July 1, 2014 with John Schloth, the owner of the cabin on Forest Service lot 63 located on Crescent Lake. Under the Water Well Agreement Thorp and Svoboda agreed to share the water from a common well to provide a domestic water supply to both cabins and to share the expenses of operating and maintaining the well. A copy of the Water Well Agreement is attached hereto, marked Attachment B and by this reference incorporated herein. Thorp hereby assigns all of Thorp's rights and obligations under the Water Well Agreement to Ely without representation or recourse except Thorp warrants that Thorp is the owner of the interest in the Water Well Agreement described therein and Ely hereby accepts such assignment. Thorp will save harmless, defend and indemnify Ely from any obligations accruing under the Water Well Agreement prior to the date of transfer of Thorp's interest in the Cabin under the Bill of Sale. Ely will save harmless, defend and indemnify Thorp from any obligations accruing under the Water Well Agreement after the date of transfer of Thorp's interest in the Cabin to Ely under the Bill of Sale.

3. WARRANTY: Thorp makes no representation or warranty with respect to the Cabin, the Agreement or the Water Well Agreement except as expressly stated herein. Thorp makes no representation or warranty regarding the quantity or quality of the water from the well or the condition of the Cabin or dock specifically including but not limited to any representation regarding the whether the Cabin or water well and related equipment comply with any applicable building, electrical or plumbing codes.

4. DISPUTES: Any dispute between Thorp and Ely relating to this Assignment or the Sale Agreement shall be resolved in accordance with the Dispute Resolution procedure contained in the Sale Agreement. Any dispute involving the Thorp and Ely to which Svoboda is a party will be resolved in accordance with the dispute resolution procedure contained in the Agreement.

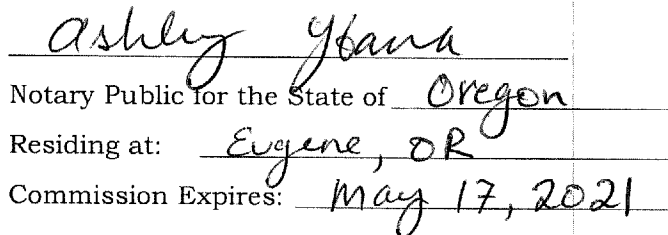
Dated ~~October~~ <sup>Nov</sup> 3<sup>rd</sup>, 2017.

  
Larry Thorp

Michele Thorp

State of Oregon } ss  
County of Lane }

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Draft 9/29/2017

5. SUCCESSORS: The terms of the Agreement shall be binding not only on Thorp and Ely but also on their successors in interest in the Cabin or under Agreement, Water Well Agreement or this Assignment. This Assignment is for the exclusive benefit of Thorp and Ely and not for the benefit of any third party specifically including Svoboda and Svoboda's successors in interest.

~~Dated October 06~~ <sup>November</sup> 06, 2017.

THORP

ELY

\_\_\_\_\_  
Larry Thorp

\_\_\_\_\_  
Robert Ely

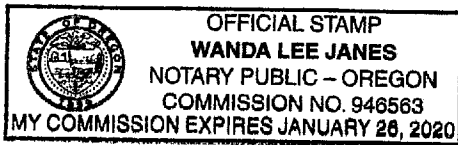
\_\_\_\_\_  
Michele Thorp

\_\_\_\_\_  
Lisa Ely

State of Oregon } ss  
County of Lincoln }

On this 6 day of November, 2017, before me, Wanda Lee Janes, a Notary Public in and for said state, personally appeared Robert & Lisa Ely, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Wanda Lee Janes

Notary Public for the State of Oregon

Residing at: 930 SW Abbey St Newport, OR

Commission Expires: 01-26-20

Attachment A: Joint Use and Maintenance Agreement

Attachment B: Water Well Agreement

Draft 9/29/2017

# Exhibit A

## JOINT USE AND MAINTENANCE AGREEMENT

PARTIES: John and Judy Svoboda (Svoboda) and Larry and Michele Thorp (Thorp)  
35798 Upper Camp Creek Road 36910 Edgehill Road  
Springfield, Oregon 97478 Springfield, Oregon 97478

### RECITALS:

- A. The Parties are equal co-owners of a cabin and related improvements and the furnishings, fixtures, appliances, dishes, utensils and linens located in the cabin and the dock located on Crescent Lake (collectively the Cabin) located on Lot 61 (the Lot) located at 24946 Crescent Lake Road, Crescent Lake, Klamath County, Oregon 97733. The Lot is owned by the United State Forest Service and is leased to the Parties for a recreational home site under an agreement between the Forest Service and Svoboda dated January 15, 2009 (the Lease).
- B. The Parties have entered into this agreement to specify the terms under which they own and will use and maintain the Cabin.

TERMS: In consideration of the foregoing recitals which are incorporated herein by reference the Parties agree to the following terms.

- 1. Ownership:
  - (a) Forest Service regulations require that the Lease be issued to only one individual or married couple. The Forest Service will not issue the Lease to multiple parties even though the Forest Service has now objections to the lessee co-owning the improvements on the Lot with other parties. As a result of that restriction the Lease lists only Svoboda as the lessee. Nevertheless the Parties agree that Svoboda and Thorp are joint undivided owners of the Cabin with equal rights to its use and enjoyment.
  - (b) If Svoboda were to sell or transfer Svoboda's ownership interest in the Cabin, the Lease would be terminated by the Forest Service and a new lease would have to be issued in the name of an individual or married couple who have an ownership interest in the Cabin. The Parties agree that if Svoboda sells or transfers Svoboda's interest in the Cabin that Svoboda will fully cooperate with Thorp and the Forest Service in having a replacement lease issued in Thorp's name.
  - (c) The Lease is for a fixed period and is subject to periodic renewal at the discretion of the Forest Service. Svoboda shall take the necessary steps to insure that the Forest Service renews the Lease each time it comes up for renewal if the Forest Service is willing to renew the Lease. Thorp shall cooperate with Svoboda in doing so.

- (d) The Parties agree that each will use, occupy and maintain the Cabin in compliance with the terms of the Lease and all applicable Forest Service rules and regulations.
- (e) John and Judy Svoboda are husband and wife and Larry and Michele Thorp are husband and wife. Upon the death of any one of them, their surviving spouse shall automatically succeed to their ownership interest and their rights and obligations hereunder.

2. Expenses:

- (a) Since the Lease lists only Svoboda as the lessee, the annual Forest Service rent statement is issued only to Svoboda. Also the Klamath County property tax account for the Cabin and the electricity account with Midstate Electric Coop is solely in Svoboda's name. Upon receipt of a statement for the rent or property taxes Svoboda shall send a copy of the statement to Thorp who shall promptly pay Svoboda one half of the amount billed. In January of each year Svoboda shall send Thorp a copy of the statements for electricity for the prior year and Thorp shall promptly pay Svoboda one half of the amount billed. Svoboda agrees to pay all of the statements rent, property taxes and electricity by the due date.
- (b) Svoboda has previously obtained fire and casualty insurance on the Cabin with a personal liability limit of \$1.5 million. The policy also lists Thorp as an additional insured. Svoboda shall continue to arrange for such coverage with an insurer licensed to do business in Oregon and shall continue to list Thorp as an additional insured. Thorp shall reimburse Svoboda for one half of the premium promptly upon receipt of evidence of coverage and the amount of the premium. In the event of an insured loss to the Cabin, the proceeds of the insurance shall be used to repair the damage. If the loss is total and the Cabin needs to be replaced, either Party may elect to retain one half of the insurance proceeds and terminate that Party's ownership interest in the Cabin by notifying the other Party in writing of its intent to do so within 60 days following the date of the loss. If both Parties elect to terminate then the proceeds of the insurance shall be used to pay any cleanup of the Lot necessary in order to satisfy the terms of the Lease and the balance of the insurance proceeds shall be divided equally between the Parties. If neither party elects to terminate its ownership in the Cabin, the Parties shall use the insurance proceeds to replace the Cabin.
- (c) The Parties shall each pay one half of all other expenses related to the joint use and occupancy of the Cabin including replacement or repair of furniture, fixtures or appliances. Each Party may spend up to \$200 for a single item of repair or replacement up to a maximum of \$600 per calendar year for all items of repair or replacement without the prior approval of the other Party. The other Party shall reimburse the spending Party for one half of such expenses upon reasonable evidence that the repairs or replacements and their costs were reasonable. If a Party spends more than \$200 for an item or \$600 during a calendar year for all of such items without the prior approval of the other Party all of such costs in excess of \$200 per item and \$600 per year shall be paid in full by the Party that purchased the item. However, if a necessary repair is immediately required to avoid a substantial risk of further damage to the Cabin or personal injury and it is impractical for one Party to contact the other Party about the required repair, then the Party may make the necessary repair without consulting the other Party in advance and each Party shall pay one half of the cost of the repair even if it exceeds \$200. During January of each year, each Party shall provide the other party with a list of items and evidenced of their cost for which the Party seeks reimbursement and the appropriate reimbursement shall be made.

- (d) Each Party shall promptly repair or replace at its sole expense any damage to the Cabin caused by that Party or that Parties guests or visitors except for items needing repair or replacement due to normal wear and tear. The costs of items needing replacement or repair due to normal wear and tear shall be shared equally by the Parties as provided in subsection 2.(b) above.
  - (e) If the Lease is terminated by the Forest Service under certain circumstances outlined in the Lease, the Cabin owner is obligated to remove the Cabin and other improvements to the Lot at the Cabin owner's expense. In the unlikely event the Forest Service terminates the Lease in a way that requires the Cabin owner to remove the Cabin and improvements to the Lot, the Parties shall each pay one half of the cost of removal.
  - (f) The Water Well Agreement referred to in subsection 5.(c) below requires the owners of other cabins sharing the water from the well to share in the expenses for maintenance of the well, pump and pressure tank. The Parties to this Agreement shall treat such expenses as an expense for maintaining the Cabin and shall share such expense accordingly. The Water Well Agreement also requires the owners of the other cabins receiving water from the well to reimburse the owner of Cabin 61 for a portion of the cost for the electricity to operate the well pump. Any reimbursement received for the electricity shall be applied to pay the electrical bill for the Cabin. The Water Well Agreement also provides that if the owner of cabin 62 hooks up to the well and is charged a fee for doing so, the fee will be split between the owner of the cabin on lot 63 and the Parties as the owners of the Cabin. Any portion of the fee paid to the owners of the Cabin shall be divided equally between Svoboda and Thorp.
3. Use: The Cabin shall be used and occupied only by the Parties and their lineal descendants. The Cabin may not be rented by either party nor may either Party allow anyone else to use or occupy the Cabin without the prior written consent of the other Party. The Parties shall be entitled to have guests stay at the Cabin but only when the Party is also staying at the Cabin.
4. Scheduling: Unless the Parties agree in advance in writing to a different schedule, each Party shall be entitled to the exclusive use of the Cabin according to the following schedule.
- (a) During each even numbered year, Svoboda shall be entitled to the exclusive use of the Cabin during the first 15 days of January, March, May, July, September and November. Thorp shall be entitled to the exclusive use of the Cabin during the remainder of those months.
  - (b) During each even numbered year, Thorp shall be entitled to the exclusive use of the Cabin during the first 15 days of February, April, June, August, October and December. Svoboda shall be entitled to the exclusive use of the Cabin during the remainder of those months.
  - (c) During each odd numbered year, Thorp shall be entitled to the exclusive use of the Cabin during the first 15 days of January, March, May, July, September and November. Svoboda shall be entitled to the exclusive use of the Cabin during the remainder of those months.
  - (d) During each odd number year, Svoboda Shall be entitled to the exclusive use of the Cabin during the first 15 days of February, April, June, August, October and December. Thorp shall be entitled to the exclusive use of the Cabin during the remainder of those months.
  - (e) For purposes of this section 4. a year shall mean a calendar year and the first 15 days of each month shall run from noon on the first day of the calendar month until noon on the 16<sup>th</sup> of the month. The remainder of the month shall run from noon on the 16<sup>th</sup> of the month until noon on the first day of the following month.

5. Assignment:

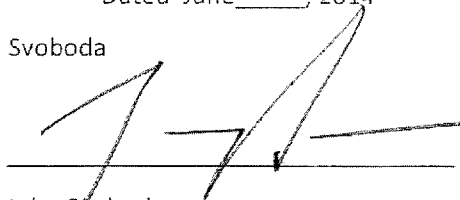
- (a) Each Party shall have the right to sell or transfer their interest in the Cabin without the consent of the other Party. However, any sale or transfer by Svoboda shall be subject to the terms regarding the termination and reissuance of the Lease provided in subsection 1.(b) above.
- (b) If either Party sells or transfers their interest in the Cabin, the buyer or transferee shall assume and be subject to all of the rights and obligations of the seller or transferor under this agreement. The selling or transferring Party shall provide the buyer or transferee a copy of this Agreement prior to the sale or transfer and as a part of the sale or transfer obtain the agreement of the buyer or transferee to be bound by the terms of this Agreement as a part of their right to acquire an interest in the Cabin.
- (c) The Parties have entered into a Water Well Agreement with the owner of the recreational cabin located on Forest Service lot 63. The Water Well Agreement provides the terms and conditions under which the Parties share a water well to provide domestic water to their cabins. The selling or transferring Party shall provide the buyer or transferee a copy of the Water Well Agreement prior to the sale or transfer and obtain the buyer's or transferee's agreement to be bound by the terms of the Water Well Agreement as a part of the acquisition of an interest in the Cabin.

6. Disputes: It is in the best interest of both Parties to cooperate with each other on all matters related to the Cabin or its use or maintenance and resolve such matters between themselves. But in the event they are unable to do so they shall resolve any disagreements through the use of mediation and arbitration in lieu of litigation. Either Party may refer any unresolved issues in to any mediation and arbitration service generally recognized in the state of Oregon for resolution. The other Party shall fully cooperate in such process. All mediation and arbitration proceedings shall be convened at the Crescent Odell Lakes RFPD fire hall unless the Parties and the mediator or arbitrator agree to a different location. Each Party shall pay one half of the mediation and arbitration fees and expenses as well as their own costs, expenses and professional fees.

7. Effective Date and Duration: This Agreement shall be effective on September 1, 2014 and shall continue for so long as either Party or their successors in interest continue to own any interest in the Cabin.

Dated <sup>July</sup> ~~June~~ 2, 2014

Svoboda

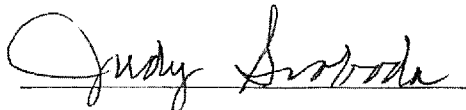


John Svoboda

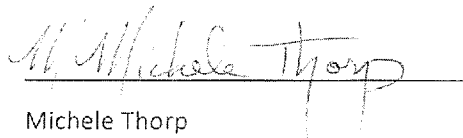
Thorp



Larry Thorp



Judy Svoboda



Michele Thorp



# Exhibit B

## WATER WELL AGREEMENT

PARTIES: John Schloth (Schloth)

John and Judy Svoboda and Larry and Michele Thorp (collectively Svoboda)

### RECITALS:

- A. Schloth owns a recreational cabin on United States Forest Service lot 63 on Crescent Lake in Klamath County Oregon. Svoboda owns a recreational cabin on lot 61 of the same Forest Service subdivision.
- B. The parties have previously drilled a water well and installed a pump and pressure tank with Forest Service permission, on Forest Service land near lot 61 to provide a domestic water supply for their cabins. Each Party paid for one half of the cost of establishing the water system. Electricity to run the well pump is provided through an electrical hook up to the electrical panel and meter for cabin 61.
- C. The well was also plumbed to provide water for the cabin on lot 62 which is between the Parties cabins. But cabin 62 has not been hooked up to the well nor is there any agreement between the Parties and the owner of lot 62 to do so in the future.
- D. The Parties have entered into this Agreement to specify the terms under which they will continue to own, operate and maintain the well and water connections to their respective cabins.

TERMS: In consideration of the foregoing recitals and which are incorporated herein by reference the Parties agree to the following terms.

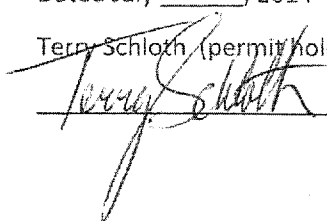
1. Ownership: The Parties agree that the well, pump and pressure tank will be continue to owned and operated for the domestic use and benefit of cabins 61 and 63. Water from the well shall not be used to irrigate landscaping, dust control or washing vehicles or boats because of the risk of depleting the water supply. The Parties also agree that if the owner of cabin 62 wants to purchase the right to use the well for domestic water for cabin 62 the owner may do so only upon terms mutually agreeable to both Parties. The purchase price paid by the owner of the cabin on lot 62 shall be shared equally by the Parties. If the Parties agree to allow the owner of cabin 62 to connect to the well, such owner must agree to become a party to and abide by the terms of this or a mutually agreeable separate agreement. The owner of the cabin on lot 62 shall also pay for all costs and expenses for connecting to the well.

2. Maintenance: Each Party shall pay for one half of the cost of repair and maintenance of the well, pump pressure tank, the connections between them and the electrical connection to the electrical panel for cabin 61. If the pump or pressure tank has to be replaced or a new well has to be drilled Each Party shall pay one half of the cost for doing so. If the owner of the cabin on lot 62 becomes a party to this Agreement each of the parties shall pay one third of the cost. Each Party shall be responsible for maintaining the water line from the pressure tank distribution point to their respective cabins and all of the plumbing and water lines and equipment in their cabins.
3. Electricity: Each Party shall pay for one half of the cost of electricity to operate the well pump. Electricity for the well is not separately metered and is metered in common with electricity for cabin 61. The Parties estimate that each Party's use of the well results in a charge for electricity of \$75 per year. Therefore, for electricity used during calendar year 2015 and subsequent years, Schloth shall pay Svoboda not later than December 31 of each year \$75 for Schloth's share of the electrical bill due to Schloth's use of the well. If either Party feels at any time that the annual reimbursement rate is not a reasonable estimation for the cost of electricity allocable to Schloth, the Parties shall meet and attempt to agree on an adjustment to the rate. If they are unable to agree on a new rate it shall be determined by mediation or arbitration in the same manner as other disputes under this agreement. If the owner of cabin 62 is allowed to hook up to the well, such owner shall pay Svoboda the same amount annually for electricity for the well as Schloth.
4. Duration: This Agreement shall be effective as of July 1, 2014 and shall continue for so long as Schloth, Svoboda and their successors in interest continue to own cabins 61 and 63 and continue to draw water from the well for their cabins' domestic use. If Svoboda obtains a new source of domestic water and Schloth continues to obtain water from the well for Schloth's cabin, Schloth shall have the electrical connection for the well switched from cabin 61 to cabin 63. The cost for doing so shall be shared equally by the Parties.
5. Assignment: If either Party (or any the the individuals collective described as Svoboda) sells or transfers their interest in their respective cabins they shall provide a copy of this Agreement to the buyer or transferee who must agree to the the terms of this agreement in order to continue using the well and appurtanences to provide domestic water to their cabin.
6. Disputes: The Parties shall attempt to resolve any disputes regarding the use or maintenance of the well by mutual agreement. But if they are unable to do so, they shall resolve such disagreement by mediation and arbitration in lieu of litigation. Either Party may refer any unresolved issues to any mediation or arbitration service generally recognized in Oregon. The other Party shall fully cooperate in such process. All mediation or arbitration proceedings shall be convened at the Crescent Odell Lakes RFPD fire hall unless the Parties and mediator or arbitrator agree otherwise. Each Party shall pay one half of the mediation and arbitration fees and expenses as well as their own costs and professional fees.

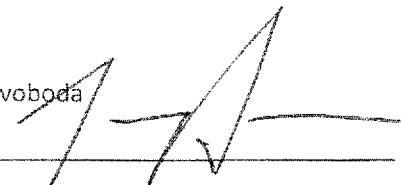
(SIGNATURES AND DATE ON PAGE 3)

Dated July \_\_\_\_\_, 2014

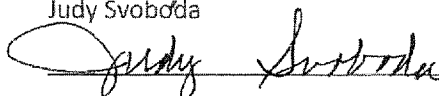
Terry Schloth (permit holder)

  
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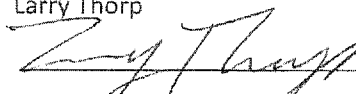
John Svoboda

  
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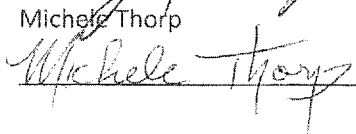
Judy Svoboda

  
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Larry Thorp

  
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Michele Thorp

  
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