

2019-001089

Klamath County, Oregon



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**GEOHERMAL WELL AGREEMENT
AND EASEMENT**

THIS AGREEMENT is made this 28 day of JANUARY, 2019, by and between the following parties:

Kenneth Garold Thompson
Trustee of the Kenneth and Willa Thompson Family Trust dated August 10, 1989
2378 Linda Vista Drive
Klamath Falls, Oregon 97601
(hereinafter referred to as "Thompson Trust")

Michael P. Rudd and Jennifer A. Rudd, husband and wife
2365 Linda Vista Drive
Klamath Falls, Oregon 97601
(hereinafter referred to as "Rudds")

Jerry Molatore and Yvette Molatore, husband and wife
2325 Linda Vista Drive
Klamath Falls, Oregon 97601
(hereinafter referred to as "Molatores")

Bradford J. Aspell and Susan E. Aspell, husband and wife
2309 Linda Vista Drive
Klamath Falls, Oregon 97601
(hereinafter referred to as "Aspells")

Patrick Colahan and Carlye Baker, husband and wife
2372 Linda Vista Drive.
Klamath Falls, Oregon 97601
(hereinafter referred to as "Colahan/Baker")

RECITALS

A. The Thompson Trust is the owner of the following described property:

Lot 15 in Block 1 of First Addition to Loma Linda Heights in the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, less and excepting that portion of Lot 15, Block 1 deeded to the City of Klamath Falls, Oregon, by Deed recorded September 20, 1966, in volume M66, Page 9333, and re-recorded July 1, 1977, in Volume M77, Page 11642, all deed records of Klamath County, Oregon.

Hereafter referred to as the "Thompson Triplex Property", on which the well, piping, and interchange manifold allowing for the two supply systems are located, collectively the "well head".

Brandsness, & Rudd PC.
Returned at Counter

- B. The Thompson Trust is the owner of the following described property:

Lot 14 in Block 1 of First Addition to Loma Linda Heights in the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Hereinafter referred to as the "Thompson Residence".

- C. Rudds are the owners of the following described property:

Lot 9 in Block 2 of First Addition to Loma Linda Heights in the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, saving an excepting that portion deeded to the City of Klamath Falls, in Deed Volume M66 on page 9332, Microfilm records of Klamath County, Oregon.

Hereafter referred to as the "Rudds' Property".

- D. Molatores are the owners of the following described property:

Lots 3, 4 and 8 in Block 2 of First Addition to Loma Linda Heights in the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Hereafter referred to as the "Molatores' Property".

- E. Aspells are the owners of the following described property:

Lot 2 in Block 2 of First Addition to Loma Linda Heights in the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Hereafter referred to as the "Aspells' Property".

- F. Colahan/Baker are the owners of the following described property:

Lot 13 in Block 1 of First Addition to Loma Linda Heights in the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Hereafter referred to as the "Colahan/Baker Property".

G. The Rudds, Molatores, Aspells and Colahan/Baker desire to access the geothermal well head located on the Thompson Triplex Property as a residential heat source for the Rudds' Property, Molatores' Property, Aspells' Property and Colahan/Baker Property. The Thompson Trust is willing to allow the parties to do so pursuant to the conditions set forth in this agreement. The Thompson Trust reserves to itself, for the benefit of the Thompson Residence, in Lot 14, Block 1 of First Addition to Loma Linda Heights in the City of Klamath Falls, all rights of use of the geothermal heat source, and well head, not inconsistent with this agreement, and reserves an easement for use, and right of way across the Thompson Triplex Property on Lot

15, Block 1, First Addition to Loma Linda Heights, City of Klamath Falls, Oregon for the benefit of the Thompson Residence in the event of the transfer of either property.

H. The Thompson Trust has agreed to grant an easement and right-of-way across the Thompson Triplex Property from the geothermal well head located on the Thompson Triplex Property to the Rudds' Property for the purpose of a geothermal transmission system. The Thompson Trust and Rudds have agreed to grant an easement and right of way across the Thompson Triplex Property and Rudds' Property to the Molatores' Property for the purpose of a geothermal transmission system. The Thompson Trust, Rudds and Molatores have further agreed to grant an easement and right-of-way across the Thompson Triplex Property, Rudds' Property, and Molatores' Property to the Aspells' Property for the purpose of a geothermal transmission system.

I. The Thompson Trust has also agreed to grant an easement and right-of-way to Colahan/Baker from the well head across the Thompson Triplex Property and Thompson Residence Property from the geothermal well head located on the Thompson Triplex Property to the Colahan/Baker Property for the purpose of a geothermal transmission system.

J. On or about March 16, 2004 the Thompson Trust and Ronald Lee Powley and Vicki Jean Powley, Co-trustees of the Ronald Lee Powley and Vicki Jean Powley Family Trust 1988 ("Powley Trust") entered into a Geothermal Well Agreement. Said Geothermal Well Agreement allowed the Powley Trust to access geothermal heat from the geothermal well head on the Thompson Triplex Property and granted an easement for geothermal transmission. A copy of said Geothermal Well Agreement is attached hereto as Exhibit 1 and by reference incorporated herein. This Geothermal Well Agreement was not recorded in Klamath County Property Records.

K. On or about March 28, 2007 the Thompson Trust, Powley Trust, Robert A. Kent and Sally M. Kent, husband and wife ("Kents") and Molatores entered into an Amendment to Geothermal Well Agreement and Easement. Said Amendment to Geothermal Well Agreement and Easement allowed Kents and Molatores to also access the geothermal well head on and across the Thompson Triplex Property for geothermal heat and granted an easement for geothermal transmission. A copy of the Amendment to Geothermal Well Agreement and Easement is attached hereto as Exhibit 2 and by reference incorporated herein. The Amendment to Geothermal Well Agreement and Easement was recorded in Klamath County Property Records on April 13, 2007 at Volume 2007 page 006861.

L. Subsequent thereto the Powley Trust assigned its interest in the Geothermal Well Agreement and Amendment to Geothermal Well Agreement and Easement to Rudds. Also subsequent thereto Kents assigned their interest in the Geothermal Well Agreement and Amendment to Geothermal Well Agreement and Easement to Aspells.

M. The parties desire to cancel the Geothermal Well Agreement attached as Exhibit 1 and cancel the Amendment to Geothermal Well Agreement and Easement attached as Exhibit 2. The parties desire to render said agreement null and void and to substitute this Geothermal Well Agreement and Easement in place thereof.

WHEREFORE the parties agree as follows:

1. **Grant of Easement by Thompson Trust.**

A. The Thompson Trust grants to Rudds, Molatores and Aspells a perpetual and non-exclusive easement and right-of-way from the well head for the sole purpose of laying, constructing, repairing, replacing and maintaining the geothermal transmission system to extract heat from the geothermal well on the Thompson Triplex Property and transport said geothermal heat through geothermal transmission lines to heat existing improvements located on the Rudds' Property, Molatores' Property and Aspells' Property. The exact location of the easement and rights-of-way shall be in the discretion of the Thompson Trust so long as it exits the Thompson Triplex Property at a point acceptable to the City of Klamath Falls and acceptable to the Rudds, Molatores and Aspells. The grant of this easement shall be perpetual and run with the respective properties.

B. The Thompson Trust further grants to Colahan/Baker a perpetual and non-exclusive easement and right-of-way from the well head for the sole purpose of laying constructing, repairing, replacing and maintaining the geothermal transmission system to extract heat from the geothermal well on Thompson Triplex Property across the Thompson Residence Property and transport said geothermal heat through geothermal transmission lines to heat the single family residence located on the Colahan/Baker Property. The exact location of the easement and right-of-way shall be in the discretion of the Thompson Trust so long as its exits the Thompson Triplex Property at a point acceptable to the City of Klamath Falls and Colahan/Baker. The grant of this easement shall be perpetual and run with the respective properties.

2. **Grant of Easement by Rudds.** Rudds grant to Molatores and Aspells a perpetual and non-exclusive easement across that portion of the Rudds Property shown on the attached Exhibit 3, which by reference is incorporated herein, for the benefit of, and appurtenant to the Molatores' Property and Aspells' Property for the purpose of laying, constructing, repairing, replacing and maintaining the geothermal transmission lines on the Rudds Property.

3. **Grant of Easement by Molatores.**

A. Molatores grant to Aspells a perpetual and non-exclusive easement across that portion of the Molatores' Property shown on the attached Exhibit 3, which by reference is incorporated herein, for the benefit of, and appurtenant to the Aspells' Property for the purpose of laying, constructing, repairing, replacing and maintaining the geothermal transmission lines on the Molatores' Property.

B. Molatores reserve to the benefit of Lots 3 and 4 of Block 2, and grants for the benefit of Aspells, Lot 2, Block 2, as augmented by property line adjustment 3-18 a perpetual non-exclusive easement across a portion of Molatores' Property known as Lots 3, 4 of Block 2, as shown on attached Exhibit 3, and which by reference is incorporated herein and reserves for the benefit of lots Lots 3 and 4, Block 2, and grants for the benefit of Lot 2, Block 2 as

augmented by property line adjustment 3-18 an easement appurtenant across Lot 8, Block 2, for the purpose of laying construction, repairing, replacing and maintaining the geothermal transmission lines on Lot 8, Block 2.

4. **Grant of Easement by Aspells.** Aspells grant to Molatores a perpetual and non-exclusive easement across that portion of Lot 2, Block 2 of the Aspells' Property shown in the attached Exhibit 3 and as supplemented in City of Klamath Falls, property line adjustment 3-18 which by reference is incorporated herein for the benefit of and pertaining to Molatores' Property for purposes of constructing, repairing, replacing and maintaining the geothermal transmission lines on the Aspells' Property.

5. **Well on Aspell Property.** Aspells acknowledges that the geothermal well located on the Aspells' Property is owned one-half (½) by Aspells, for the benefit of the Aspells' Property and one-half (½) by Molatores for the benefit of the Molatores' Property, and that all rights pertaining to said geothermal well and the use of its water shall run with the Aspells' Property and the Molatores' Property.

6. **Repair and Maintenance of Well Head.** As to the Thompson Triplex Property, the Thompson Trust, Rudds, Molatores, Aspells and Colahan/Baker each shall share equally the cost of any repairs, replacement and improvements to the geothermal source well, and common piping to and including the manifold which serves all properties. The Thompson Trust, as owners of the Thompson Residence may, but shall not be required to participate in the cost of such repairs and improvements.

Should the Thompson Triplex Property and the Thompson Residence be transferred into separate ownership, each individual owner shall share equally in the costs of any repairs, replacements and improvements of the well, and common piping including the manifold which serves all properties.

7. **Repair and Maintenance of Geothermal Transmission Lines.**

A. 1. Colahan/Baker and Thompson Trust as to the Thompson Residence shall be responsible for the cost of repair, maintenance and replacement of the geothermal transmission lines from the location the geothermal transmission lines leave the common manifold on the Thompson Triplex property to the Thompson Residence Property;

2. Colahan/Baker shall be responsible for the costs of repair, maintenance and Replacement of the geothermal transmission lines from the location the geothermal transmission lines leave the Thompson Residence;

3. Should the Thompson Residence be transferred to separate ownership from the Thompson Trust, such owners shall share equally the cost or any repairs, replacement, and improvements from the location that the geothermal transmission lines leave the common manifold on the Thompson Triplex Property to the point that it enters the Thompson Residence, and Colahan/Baker shall be responsible for the cost of maintenance, replacement or repair of the geothermal transmission line as it exits the Thompson Residence property and moves across the

Colahan/Baker property to the Colahan/Baker residence.

B. Rudds, Molatores and Aspells shall be equally responsible for the cost of repair, maintenance and replacement of the geothermal transmission line from the location the geothermal transmission line leaves the common manifold on the Thompson Triplex Property to the point where the transmission line enters the Rudds' residence. Molatores and Aspells shall be equally responsible for the cost of repair, maintenance and replacement of the geothermal transmission lines from the Rudds' residence and across Molatores' Lot 8, Block 2, to the point the transmission "tees" to serve Molatores' Residence on Lots 3 and 4, Block 2, and Aspells' Residence on Lot 2, Block 2. Aspells shall be responsible for the cost of repair, maintenance and replacement of geothermal transmission line from the point the transmission line "tees" and exits the Molatores' property and across the Aspells' Property to the Aspells' residence; and Molatores shall be responsible for the costs of repairs, maintenance, and replacement of the geothermal transmission lines from the point the transmission lines "tee" to exclusively serve the Molatores' Property.

C. As used in the paragraphs above "enter" or "enter the residence" shall include the transmission lines located exclusively within a parties' residence, or if outside, at the location the line exclusively serves the parties' property.

D. Each party shall be responsible for the repair, maintenance and replacement of transmission lines that are for the sole purpose of heating that party's individual residence.

8. **Notice of Repair, Maintenance or Replacement.** If in the opinion of any party, repair or replacement of the pump, well head, down hole piping, common manifold, and/or geothermal transmission lines is necessary, written notice shall be provided to the other responsible party or parties, if any, in writing, describing the maintenance, repair or replacement to be undertaken and the cost thereof, if known. If the party or parties receiving the notice do not object in writing within ten (10) days of receipt of the notice, then the cost of said repair and/or replacement shall be divided equally between the responsible parties as otherwise provided herein.

9. **Make Up Water.** Water may periodically be needed to recharge the system. The party providing the water may, at the cost to all parties on the combined system install a meter at the source and periodically assess all parties equally for the costs of water delivered to the system.

10. **Drop in Geothermal Source Temperature.** In the event the temperature of the geothermal well on the Thompson Triplex Property drops below 150° Fahrenheit at the well head due to geologic reasons such that the five (5) properties referenced herein cannot generate adequate heat for their residences then the properties shall be required to disconnect from the geothermal transmission system in the following order:

1. Colahan/Baker Property
2. Aspells' Property
3. Molatores' Property
4. Rudds' Property

5. Thompson Residence

In the event the geothermal well on the Thompson Triplex Property falls below 150° Fahrenheit measured at the well head for a period of ten (10) days continuously, caused by aged or inefficient piping, an aged or inefficient pumping system or other related mechanical geothermal system failure, then Section 6 of this agreement shall apply.

11. **Opt Out.** Any party, his or her heirs, successors, or assigns may opt out of this agreement and disconnect from their portion of the system and be relieved of any liability provided all of that party's proportional costs have been paid, a physical disconnection has been made at the withdrawing party's expense, and the release has been recorded in the real property records of Klamath County. No reconnection shall be made except as provided in Paragraph 15.B of this agreement.

12. **Substituted Agreement.** This agreement supersedes and replaces the March 16, 2004 Geothermal Well Agreement attached as Exhibit 1 and the March 28, 2007 Amendment to Geothermal Well Agreement and Easement attached as Exhibit 2. These previous agreements are deemed null and void and are cancelled by mutual consent of the parties hereto. This agreement also supersedes all prior understanding and other agreements of the parties, whether written or oral, with respect to this matter.

13. **Arbitration.** If a controversy arises as to the enforcement of this agreement or the interpretation of any terms of this agreement and the parties are unable to reach an agreement, the parties shall submit the controversy to arbitration in accordance with Oregon Revised Statutes.

14. **Fulfillment of Party's Obligations.** In the event any party fails to fulfill their obligations under this agreement, the other party or parties may perform on behalf of the defaulting party or parties, and to the extent that one or more parties discharge a financial obligation due from another party for any reason, fails to make such party's pro rata contribution, the other party or parties (the "advancing party") may advance funds for the account of the defaulting party; and, that any funds so advanced will be a debt of the defaulting party due the advancing party and will bear interest from the date made at 9% per annum and will be immediately due and payable to the advancing party, with interest; without further demand or notice the advancing party, may on not less than twenty (20) days prior written notice, bring legal action for collection, together with reasonable costs, disbursements and attorney fees.

15. **Rights Run with Land Assignment.**

A. The rights herein shall run with the land and be automatically transferred-with the sale of a party's real property. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by any party without the written consent of the other parties.

B. No further extension of rights to access or use of the geothermal well and thermal transmission lines shall be made without the express written consent of all parties to this agreement.

16. **Notices.** All notices and other communications under this Agreement must be in writing and will be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the parties at the following addresses or facsimile numbers or at such other address or facsimile number as a party may designate by like notice to the parties:

Kenneth Garold Thompson Trustee of the
Kenneth and Willa Thompson Family Trust dated August 10, 1989
2378 Linda Vista Drive
Klamath Fall, Oregon 97601

Michael P. Rudd and Jennifer A. Rudd
2365 Linda Vista Drive
Klamath Fall, Oregon 97601

Jerry Molatore and Yvette Molatore
2325 Linda Vista Drive
Klamath Falls, Oregon 97601

Bradford J. Aspell and Susan E. Aspell
2309 Linda Vista Drive
Klamath Falls, Oregon 97601

Patrick Colahan and Carlye Baker
2372 Linda Vista Drive.
Klamath Falls, Oregon 97601

17. **Amendment.** This Agreement may be amended only by an instrument in writing executed by all the parties, which writing must refer to this Agreement.

18. **Construction.** The captions used in this Agreement are provided for convenience only and will not affect the meaning or interpretation of any provision of this Agreement. All references in this Agreement to "Section" or "Sections" without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Whenever the words "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." The rule of construction that in the event of any ambiguity the agreement shall be construed against the drafter of the agreement shall not apply.

19. **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

20. **Expenses.** Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its own expenses in connection with the preparation, execution and performance of this Agreement and the transactions contemplated by this Agreement.

21. **Waiver.** Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

22. **Applicable Law.** This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.

23. **Equitable Remedies.** The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that in addition to damages, the other parties will be entitled to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

24. **Venue.** Except as otherwise provided by Section 12 herein, any action or proceeding seeking to enforce any provision of this Agreement or based on any right arising out of this Agreement must be brought against any of the parties in Klamath County Circuit Court of the State of Oregon, or subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.

25. **Exhibits.** The exhibits referenced in this Agreement are part of this Agreement as if fully set forth in this Agreement.

26. **Severability.** If any provision of this Agreement is deemed to be invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provision of this Agreement will not be impaired in any way.

27. **Attorney Fees.** In the event arbitration, suit or action is instituted by any party, the prevailing party or parties may be awarded attorney fees in such arbitration, suit or action or upon appeal.

28. **Binding Effect.** This Agreement shall bind the parties, their heirs, successors and permitted assigns.

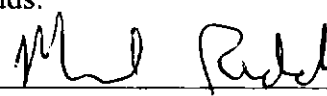
29. **Memorandum/Recording:** This Geothermal Well Agreement and Easement shall be recorded in Klamath County Deed of Records at the shared cost of all parties.

30. **Acknowledgement:** This Agreement was prepared by Melvin D. Ferguson, Attorney at Law as the attorney for Colahan/Baker. All other parties have been afforded the right to consult with an attorney of their choice.

Thompson Trust

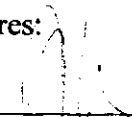
By: 
Kenneth Garold Thompson, Trustee

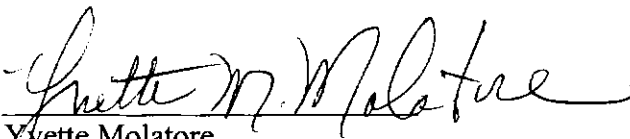
Rudds:

By: 
Michael P. Rudd

By: 
Jennifer A. Rudd

Molatoes:

By: 
Jerry Molatore


By: 
Yvette Molatore

Aspells:

By: 
Bradford J. Aspell

By: 
Susan E. Aspell

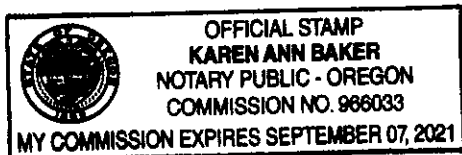
Colahan/Baker

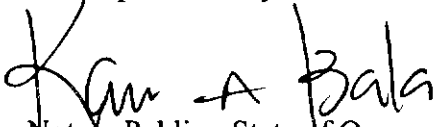
By: 
Patrick Colahan

By: 
Carlye Baker

STATE OF OREGON)
) ss.
County of Klamath)

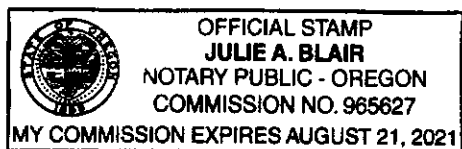
This instrument was acknowledged before me on JAN 28, 2019, 2018, by Kenneth Garold Thompson, Trustee of the Kenneth and Willa Thompson Family Trust dated August 10, 1989.




Notary Public - State of Oregon
My commission expires: 9-7-2021

STATE OF OREGON)
) ss.
 County of Klamath)

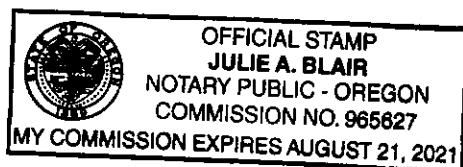
This instrument was acknowledged before me on January 16, 2018, by Michael P. Rudd.



Julie Blair
 Notary Public - State of Oregon
 My commission expires: 8/21/21

STATE OF OREGON)
) ss.
 County of Klamath)

This instrument was acknowledged before me on January 16, 2018, by Jennifer A. Rudd.



Julie Blair
 Notary Public - State of Oregon
 My commission expires:

STATE OF OREGON)
) ss.
 County of Klamath)

This instrument was acknowledged before me on January 4, 2018, by Jerry Molatore.



Sandra Hoskins
 Notary Public - State of Oregon
 My commission expires: 5-14-2021

STATE OF OREGON)
) ss.
 County of Klamath)

This instrument was acknowledged before me on January 4, 2018, by Yvette Molatore.



Sandra Hoskins
 Notary Public - State of Oregon
 My commission expires: 5-14-2021

STATE OF OREGON)
) ss.
 County of Klamath)

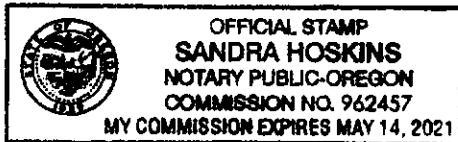
This instrument was acknowledged before me on January 7, 2018, by Bradford J. Aspell.



Sandra Hoskins
 Notary Public - State of Oregon
 My commission expires: 5-14-2021

STATE OF OREGON)
) ss.
 County of Klamath)

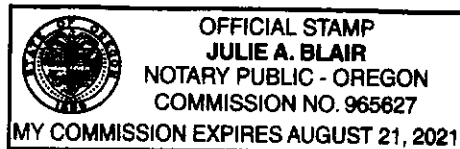
This instrument was acknowledged before me on January 7, 2018, by Susan E. Aspell.



Sandra Hoskins
 Notary Public - State of Oregon
 My commission expires: 5-14-2021

STATE OF OREGON)
) ss.
 County of Klamath)

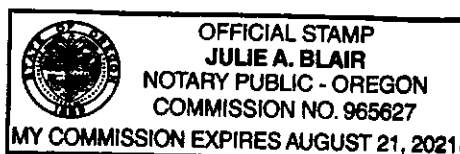
This instrument was acknowledged before me on January 15, 2018, by Patrick Colahan.



Julie Blair
 Notary Public - State of Oregon
 My commission expires: 8/21/21

STATE OF OREGON)
) ss.
 County of Klamath)

This instrument was acknowledged before me on January 15, 2018, by Carlye Baker.



Julie Blair
 Notary Public - State of Oregon
 My commission expires: 8/21/21

GEOHERMAL WELL AGREEMENT

THIS AGREEMENT made this 16th day of March 2004, by and between KENNETH GAROLD THOMPSON and WILL IONE THOMPSON, co-trustees of the Kenneth and Willa Thompson Family Trust dated August 10, 1989 (hereinafter called "Thompson Trust"), and RONALD LEE POWLEY and VICKI JEAN POWLEY, co-trustees of the Ronald Lee Powley and Vicki Jean Powley Family Trust 1988 (hereinafter called "Powley Trust").

RECITALS:

- A. Thompson Trust is the owner of a parcel of real property situate in Klamath County, Oregon, described as follows:

Lot 15, Block 1, First Addition to Loma Linda Heights in the City of Klamath Falls, according to the official plat thereof on file in the office of the county clerk of Klamath County, Oregon, less and excepting that portion of Lot 15, Block 1, deeded to the City of Klamath Falls, Oregon, by Deed recorded September 20, 1966, in Volume M66, Page 9333, and re-recorded July 1, 1977, in Volume M77, Page 11642, all deed records of Klamath County, Oregon;

upon which is situated a geothermal well which is suitable for domestic heating purposes, hereinafter called the "Thompson Trust Property".

- B. Powley Trust is the owner of a parcel of real property situate in Klamath County, Oregon, described as follows:

Lot 9 in Block 2 of FIRST ADDITION TO LOMA LINDA HEIGHTS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. Saving and excepting that portion deeded to the City of Klamath Falls in Deed Volume M66 on page 9332, Microfilm Records of Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the South line of Lot 9, Block 2, FIRST ADDITION TO LOMA LINDA HEIGHTS, said point being 3.80 feet East of the Southwest corner of said Lot; thence Easterly along an arc of a curve having a radius of 35.00 feet, through an angle of 62 degrees, a distance of 37.87 feet more or less to the

South line 36.05 feet more or less to the point of beginning, all in the City of Klamath Falls, Oregon;

which parcel lies across Linda Vista Drive from the Thompson Trust Property.

Said property shall hereinafter be referred to as the "Powley Trust Property".

- C. Powley Trust desires to use the geothermal well on the Thompson Trust Property as a heat source for the Powley Trust Property and Thompson Trust is willing to allow it to do so under the conditions set forth in this agreement.

AGREEMENT

In consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. Thompson Trust grants the Powley Trust an easement and right of way from the pump house currently located upon the Thompson Trust Property to the city right-of-way for Linda Vista Drive for the sole purpose of laying, repairing and replacing the geothermal transmission system to extract heat from the geothermal well on the Thompson Trust Property to heat the single family residence located on the Powley Trust Property. The exact location of the easement shall be in the discretion of Thompson Trust so long as it exits the Thompson Trust Property at a point acceptable to the City of Klamath Falls and Powley Trust. The grant of this easement shall be perpetual and run with the respective properties.
2. Each party shall be responsible for the repair and replacement of any transmission lines that are for the sole purpose of heating the individual residences.
3. In the event the temperature of the well falls below 150° Fahrenheit for a period of time in excess of 30 days, the Thompson Trust may disconnect the water transmission line to the Powley

Trust Property. If Powley Trust desires to do so it shall be entitled to conduct such repairs or improvements to the well as may reasonably be expected to cause the temperature of the well water consistently exceed 150 .Thompson Trust may, but shall not be required to, participate in the cost of such repairs or improvements.

4. If in the opinion of either party the geothermal well, the pumps or the common transmission lines require maintenance, repair or replacement to maintain reasonable usefulness the party in whose opinion such maintenance, repair or replacement is necessary shall notify the other party in writing, describing the maintenance, repair or replacement to be undertaken and the cost thereof if known. If the party receiving the notice shall not object in writing delivered to the first party within 7 days, each party shall be responsible for one-half (1/2) of the cost thereof. If an objection is made and the parties are unable to reach an agreement, the parties shall submit the controversy to arbitration in accordance with the Oregon Revised Statutes.

5. Thompson Trust does not warrant the chemical composition of the water, quality of the water nor the quantity of water.

6. In the event either party fails to fulfill their obligations under this agreement, the other party may perform on behalf of the defaulting party.

7. In the event suit or action is instituted by either party, the prevailing party shall be awarded attorney fees in such suit or action or upon appeal.

8. This agreement shall bind the parties, their heirs, successors and assigns.

////

IN WITNESS WHEREOF, I have set my hand this 16th day of March, 2004.

Kenneth Garold Thompson
Kenneth Garold Thompson
Co-Trustee of the Kenneth and Willa Thompson Family
Trust dated August 10, 1989

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2004.

Notary Public - State of Oregon
My Commission Expires: _____

IN WITNESS WHEREOF, I have set my hand this 16th day of March, 2004.

Willa Ione Thompson
Will Ione Thompson
Co-Trustee of the Kenneth and Willa Thompson Family
Trust dated August 10, 1989

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2004.

Notary Public - State of Oregon
My Commission Expires: _____

IN WITNESS WHEREOF, I have set my hand this 16th day of March, 2004.

Ronald Lee Powley
Ronald Lee Powley
Co-Trustee of the Ronald Lee Powley and Vicki Jean
Powley Family Trust 1988

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2004.

Notary Public - State of Oregon

My Commission Expires: _____

IN WITNESS WHEREOF, I have set my hand this 16th day of March, 2004.

Vicki Jean Powley

Vicki Jean Powley

Co-Trustee of the Ronald Lee Powley and Vicki Jean
Powley Family Trust 1988

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2004.

Notary Public - State of Oregon

My Commission Expires: _____

AMENDMENT TO GEOTHERMAL WELL AGREEMENT AND EASEMENT

DATE: _____, 2006

PARTIES:

KENNETH GAROLD THOMPSON and ("Thompson Trust")
WILLA IONE THOMPSON,
Trustees of the Kenneth and Willa Thompson Family Trust
dated August 10, 1989

and

RONALD LEE POWLEY and ("Powley Trust")
VICKI JEAN POWLEY
Trustees of the Ronald Lee Powley and Vicki Jean Powley
Family Trust 1988

and

ROBERT A. KENT and SALLY M. KENT ("Kent")
Husband and Wife

and

JERRY M. MOLATORE and YVETTE M. MOLATORE ("Molatore")
Husband and Wife

RECITALS:

The Thompson Trust and the Powley Trust have entered into an agreement providing for the sharing of water from a geothermal well located on the Thompson Trust property. A copy of that geothermal well agreement (hereinafter referred to as the "Geothermal Well Agreement") is attached hereto and made a part hereof. The Geothermal Well Agreement describes the Thompson Trust property and the Powley Trust property. The Powley Trust has installed geothermal water transmission lines from a geothermal well located on the Thompson Trust property to the Powley Trust property, at the expense of the Powley Trust.

Molatore owns the following property: Lots 3 and 4 in Block 2 of First Addition to Loma Linda Heights according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon (Molatore property). Kent owns the following property: Lot 2 in Block 2 of First Addition to Loma Linda Heights according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon (Kent property).

The parties have agreed to allow Molatore and Kent to extend the geothermal transmission lines from the Powley Trust property, across Lot 8, Block 2 of Loma Linda Heights, to the Molatore property and the Kent property. Molatore and Kent have each paid to the Powley Trust one-third (1/3) of the cost to the Powley Trust of installation and construction of the geothermal lines from the Thompson Trust property to the Powley Trust property. The geothermal transmission lines from the Powley Trust property to the Molatore property and the Kent Property have been installed, at the expense of Molatore and Kent, and the Molatore property and the Kent property now use the heat and water from the well on the Thompson Trust property. Kent and Molatore enjoy the benefits of an easement across Lot 8, Block 2 of Loma Linda Heights for placement and operation of the existing geothermal transmission lines.

Kent and Molatore have agreed to become parties to the Geothermal Well Agreement and to share the obligations assumed by the Powley Trust regarding the well and the transmission lines in the Geothermal Well Agreement.

Therefore the parties agree as follows:

1. **Grant of Easement by Powley Trust.** Powley Trust grants to Kent and Molatore a perpetual and nonexclusive easement across that portion of the Powley Trust property shown on Exhibit ____ attached hereto, for the benefit of, and appurtenant to the Kent property and the Molatore property for the purpose of constructing, reconstructing and maintaining the buried geothermal line on the Powley Trust property.
2. **Grant of Easement by Thompson Trust.** Paragraph one of the Geothermal Well Agreement is amended to provide that Molatore and Kent are included as grantees of the easement across the Thompson Trust property.
3. **Grant of Easement by Molatore to Kent.** Molatore grants to Kent a perpetual and nonexclusive easement across that portion of the Molatore property shown on Exhibit A attached hereto, for the benefit of, and appurtenant to the Kent property for the purpose of constructing, reconstructing and maintaining the buried geothermal line on the Molatore property.
4. **Well on Kent Property.** Kent acknowledges that the geothermal well located on the Kent property is owned one-half (½) by Kent, for the benefit of the Kent property, and one-half (½) by Molatore, for the benefit of the Molatore property, and that all rights pertaining to the well **and the use of its water** shall run with the Kent property and the Molatore property.
5. **Thompson Agreement.** The Geothermal Well Agreement is amended as follows:
 - a. Powley Trust, Kent, and Molatore shall evenly divide the cost of repair and replacement of the transmission lines from the pump house on the Thompson Trust property to the Powley Trust property. Kent and Molatore shall evenly divide the cost of repair and replacement of the main line extension from the Powley Trust property to the extension from the main line to the Kent property. Molatore shall pay the cost of repair and replacement of the transmission line from the Kent extension to the Molatore house. Kent shall pay the cost of repair and replacement from the Kent extension of the main line to the Kent house.

- b. Thompson retains his rights under paragraph three of the Agreement.
- c. Molatore and Kent agree to equally share with the Powley Trust all obligations imposed on the Powley Trust property under the terms of the Geothermal Well Agreement. The rights and privileges afforded to the Powley Trust property under the Agreement shall likewise be shared equally among the Powley Trust property, the Kent property, and the Molatore property, except those obligations specific to each property as set forth in this paragraph five.
- d. Paragraph four of the Agreement is amended to provide that Kent and Molatore are parties to the Agreement and that the costs of maintenance, repair or replacement, if not objected to in writing, shall be allocated one-fourth (1/4) to each party.

6. This agreement has been prepared on behalf of Molatore, by Jerry M. Molatore, Attorney at Law. The other parties to this agreement acknowledge that Jerry M. Molatore does not and cannot represent any of them, and that each party has the right to have this document reviewed by an attorney of its choice.

In all other respects the Geothermal Well Agreement is ratified, confirmed and approved.

Dated: _____, 200__.

Kenneth Garold Thompson, Co-Trustee of
the Kenneth and Willa Thompson Family
Trust dated August 10, 1989

SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

Notary Public - State of Oregon
My Commission Expires: _____

Dated: _____, 200__.

Willa Ione Thompson, Co-Trustee of the
Kenneth and Willa Thompson Family Trust
dated August 10, 1989

SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

Notary Public - State of Oregon
My Commission Expires: _____

Dated: _____, 200__.

Ronald Lee Powley, Co-Trustee of the Co-
Trustee of the Ronald Lee Powley and Vicki
Jean Powley Family Trust 1988

SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

Notary Public - State of Oregon
My Commission Expires: _____

Dated: _____, 200__.

Vicki Jean Powley, Co-Trustee of the Co-
Trustee of the Ronald Lee Powley and Vicki
Jean Powley Family Trust 1988

SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

Notary Public - State of Oregon
My Commission Expires: _____

Dated: _____, 200__.

Robert A. Kent

SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

Notary Public - State of Oregon
My Commission Expires: _____

Dated: _____, 200__.

Sally M. Kent

SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

Notary Public - State of Oregon
My Commission Expires: _____

Dated: _____, 200__.

Jerry M. Molatore

SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

Notary Public - State of Oregon
My Commission Expires: _____

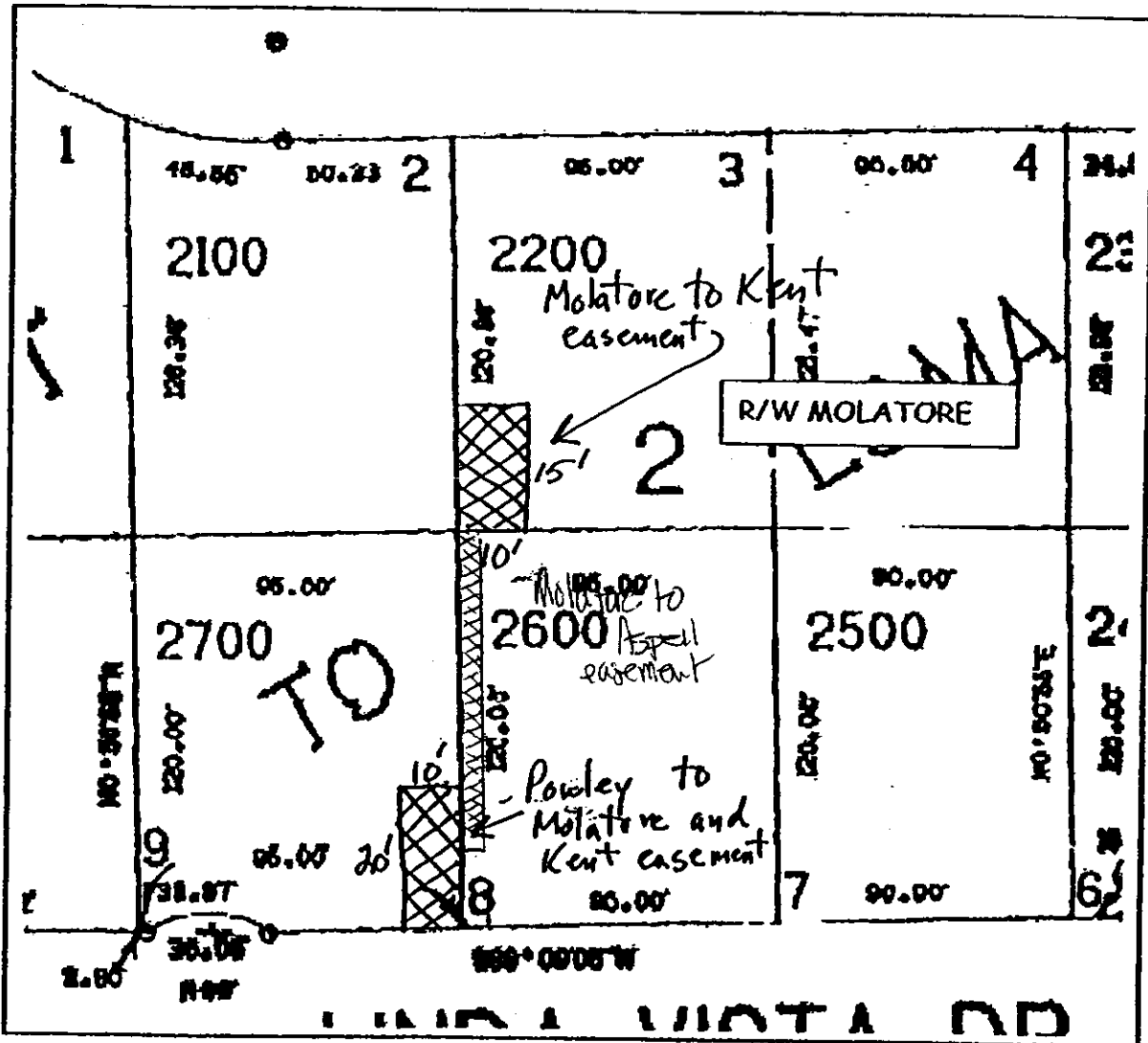
Dated: _____, 200__.

Yvette M. Molatore

SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

Notary Public - State of Oregon
My Commission Expires: _____

Exhibit 3



This drawing should be used only as a representation of the location of the easement being conveyed. The exact location of all structures, lines and appurtenances is subject to change within the boundaries of the described easement area.

SCALE: NTS

EXHIBIT A

2007-006861

Klamath County, Oregon



00020175200700068610120123

04/13/2007 11:07:23 AM

Fee: \$75.00

1* 07-150

COVER SHEET
ORS: 205.234

This cover sheet has been prepared by the persons presenting the attached instrument for recording. Any errors in this cover sheet DO NOT affect the transaction(s) contained in the instrument itself.

After recording, return to:
Jerry M. Molatore
2325 Linda Vista Drive
Klamath Falls, OR 97601

Send Tax Statements to:
Same as on file

The date of the instrument attached is 3/28/07

1) NAMES(S) OF THE INSTRUMENT(S) required by ORS 205.234(a)
Amendment to Geothermal Well Agreement and Easement

2) PARTY(IES)/GRANTOR, required by ORS 205.125(1)(b) and ORS 205.160:

Thompson, Kenneth & Willa

Powley, Ronald & Vicki

3) PARTY(IES)/GRANTEE, required by ORS 205.125(1)(b) and ORS 205.160

Kent, Robert & Sally

Molatore, Jerry & Yvette

4) TRUE and ACTUAL CONSIDERATION (if any), ORS 93.030

\$ n/a

6) RE-RECORDED to correct: _____
Previously recorded as: _____

76-F

After Recording Return To: Jerry M. Molatore
2325 Linda Vista Drive
Klamath Falls OR 97601

AMENDMENT TO GEOTHERMAL WELL AGREEMENT AND EASEMENT

DATE: March 28, 2007 *JM*

PARTIES:

KENNETH GAROLD THOMPSON and ("Thompson Trust")
WILLA IONE THOMPSON,
Trustees of the Kenneth and Willa Thompson Family Trust
dated August 10, 1989

and

RONALD LEE POWLEY and ("Powley Trust")
VICKI JEAN POWLEY
Trustees of the Ronald Lee Powley and Vicki Jean Powley
Family Trust 1988

and

ROBERT A. KENT and SALLY M. KENT ("Kent")
Husband and Wife

and

JERRY M. MOLATORE and YVETTE M. MOLATORE ("Molatore")
Husband and Wife

RECITALS:

The Thompson Trust and the Powley Trust have entered into an agreement providing for the sharing of water from a geothermal well located on the Thompson Trust property. A copy of that geothermal well agreement (hereinafter referred to as the "Geothermal Well Agreement") is attached hereto and made a part hereof. The Geothermal Well Agreement describes the Thompson Trust property and the Powley Trust property. The Powley Trust has installed geothermal water transmission lines from a geothermal well located on the Thompson Trust property to the Powley Trust property, at the expense of the Powley Trust.

Molatore owns the following property: Lots 3 and 4 in Block 2 of First Addition to Loma Linda Heights according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon (Molatore property). Kent owns the following property: Lot 2 in Block 2 of First Addition to Loma Linda Heights according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon (Kent property).

The parties have agreed to allow Molatore and Kent to extend the geothermal transmission lines from the Powley Trust property, across Lot 8, Block 2 of Loma Linda Heights, to the Molatore property and the Kent property. Molatore and Kent have each paid to the Powley Trust one-third (1/3) of the cost to the Powley Trust of installation and construction of the geothermal lines from the Thompson Trust property to the Powley Trust property. The geothermal transmission lines from the Powley Trust property to the Molatore property and the Kent Property have been installed, at the expense of Molatore and Kent, and the Molatore property and the Kent property now use the heat and water from the well on the Thompson Trust property. Kent and Molatore enjoy the benefits of an easement across Lot 8, Block 2 of Loma Linda Heights for placement and operation of the existing geothermal transmission lines.

Kent and Molatore have agreed to become parties to the Geothermal Well Agreement and to share the obligations assumed by the Powley Trust regarding the well and the transmission lines in the Geothermal Well Agreement.

Therefore the parties agree as follows:

1. **Grant of Easement by Powley Trust.** Powley Trust grants to Kent and Molatore a perpetual and nonexclusive easement across that portion of the Powley Trust property shown on Exhibit A attached hereto, for the benefit of, and appurtenant to the Kent property and the Molatore property for the purpose of constructing, reconstructing and maintaining the buried geothermal line on the Powley Trust property.
2. **Grant of Easement by Thompson Trust.** Paragraph one of the Geothermal Well Agreement is amended to provide that Molatore and Kent are included as grantees of the easement across the Thompson Trust property.
3. **Grant of Easement by Molatore to Kent.** Molatore grants to Kent a perpetual and nonexclusive easement across that portion of the Molatore property shown on Exhibit A attached hereto, for the benefit of, and appurtenant to the Kent property for the purpose of constructing, reconstructing and maintaining the buried geothermal line on the Molatore property.
4. **Well on Kent Property.** Kent acknowledges that the geothermal well located on the Kent property is owned one-half (1/2) by Kent, for the benefit of the Kent property, and one-half (1/2) by Molatore, for the benefit of the Molatore property, and that all rights pertaining to the well and the use of its water shall run with the Kent property and the Molatore property.
5. **Thompson Agreement.** The Geothermal Well Agreement is amended as follows:
 - a. Powley Trust, Kent, and Molatore shall evenly divide the cost of repair and replacement of the transmission lines from the pump house on the Thompson Trust property to the Powley Trust property. Kent and Molatore shall evenly divide the cost of repair and replacement of the main line extension from the Powley Trust property to the extension from the main line to the Kent property. Molatore shall pay the cost of repair and replacement of the transmission line from the Kent extension to the Molatore house. Kent shall pay the cost of repair and replacement from the Kent extension of the main line to the Kent house.

- b. Thompson retains his rights under paragraph three of the Agreement.
- c. Molatore and Kent agree to equally share with the Powley Trust all obligations imposed on the Powley Trust property under the terms of the Geothermal Well Agreement. The rights and privileges afforded to the Powley Trust property under the Agreement shall likewise be shared equally among the Powley Trust property, the Kent property, and the Molatore property, except those obligations specific to each property as set forth in this paragraph five.
- d. Paragraph four of the Agreement is amended to provide that Kent and Molatore are parties to the Agreement and that the costs of maintenance, repair or replacement, if not objected to in writing, shall be allocated one-fourth (1/4) to each party.

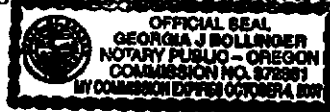
6. This agreement has been prepared on behalf of Molatore, by Jerry M. Molatore, Attorney at Law. The other parties to this agreement acknowledge that Jerry M. Molatore does not and cannot represent any of them, and that each party has the right to have this document reviewed by an attorney of its choice.

In all other respects the Geothermal Well Agreement is ratified, confirmed and approved.

Dated: 3-9-07, 2007.

Kenneth Garold Thompson
Kenneth Garold Thompson, Co-Trustee of
the Kenneth and Willa Thompson Family
Trust dated August 10, 1989

SUBSCRIBED AND SWORN to before me this 9th day of March, 2007.

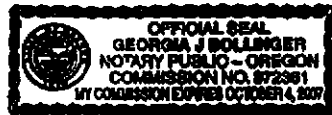


Georgia J. Bollinger
Notary Public, State of Oregon
My Commission Expires: 10/4/07

Dated: 3-09, 2007.

Willa Ione Thompson
Willa Ione Thompson, Co-Trustee of the
Kenneth and Willa Thompson Family Trust
dated August 10, 1989

SUBSCRIBED AND SWORN to before me this 9th day of March, 2007.



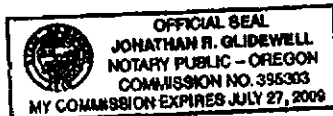
Georgia J. Bollinger
Notary Public, State of Oregon
My Commission Expires: 10/4/07

Dated: 3-20, 2007.

Ronald Lee Powley

Ronald Lee Powley, Co-Trustee of the Co-Trustee of the Ronald Lee Powley and Vicki Jean Powley Family Trust 1988

SUBSCRIBED AND SWORN to before me this 20 day of March, 2007.



[Signature]
Notary Public - State of Oregon

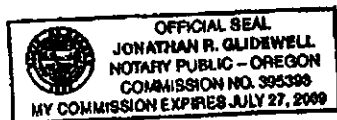
My Commission Expires: July 27, 2009

Dated: 3-20, 2007.

Vicki Jean Powley

Vicki Jean Powley, Co-Trustee of the Co-Trustee of the Ronald Lee Powley and Vicki Jean Powley Family Trust 1988

SUBSCRIBED AND SWORN to before me this 20 day of March, 2007.



[Signature]
Notary Public - State of Oregon

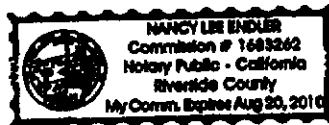
My Commission Expires: July 27, 2009

Dated: 3/20/, 2007.

Robert A. Kent

Robert A. Kent

SUBSCRIBED AND SWORN to before me this 28th day of March, 2007.



Nancy Lee Endler
Notary Public - State of ~~Oregon~~ California

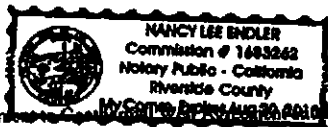
My Commission Expires: August 20, 2010

Dated: March 28, 2007.

Sally M. Kent

Sally M. Kent

SUBSCRIBED AND SWORN to before me this 28th day of March, 2007.



Nancy Lee Endler
Notary Public - State of ~~Oregon~~ California


My Commission Expires: August 20, 2010

Dated: 2-16, 2007.


Jerry M. Molatore

SUBSCRIBED AND SWORN to before me this 16 day of Feb., 2007.



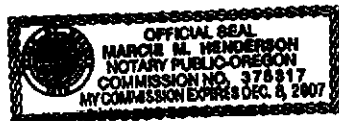

Notary Public - State of Oregon


My Commission Expires: 12-8-07

Dated: 2-20, 2007.

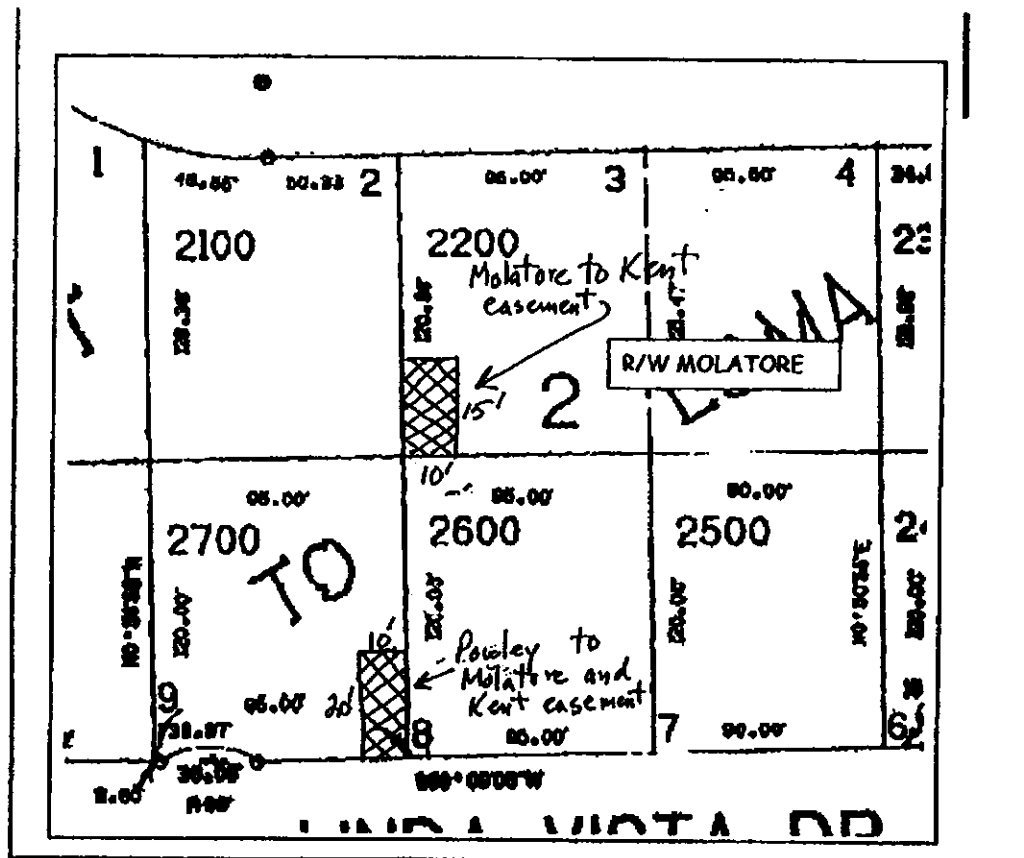

Yvette M. Molatore

SUBSCRIBED AND SWORN to before me this 20 day of Feb., 2007.




Notary Public - State of Oregon

My Commission Expires: 12-8-07



This drawing should be used only as a representation of the location of the easement being conveyed. The exact location of all structures, lines and appurtenances is subject to change within the boundaries of the described easement area.

SCALE: NTS

EXHIBIT A