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2021-003037

Klamath County, Oregon



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WELL AGREEMENT

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Fee: \$107.00

Lloyd V. Howard and Barbara G. Howard hereinafter referred to as "Grantor", on this 1st day of MARCH, 2021 hereby grants a Well Agreement under the terms and for the benefit of the properties described herein.

Recitals

A. WHEREAS the undersigned parties are owners of Parcels 1 and 2 herein described. And where the parties may soon wish to sell one of the parcels and deem it necessary to provide an adequate supply of water to service Parcels 1 and 2, formerly a single parcel, described herein. An agreement has been reached relative to supplying water from the well located on Parcel 2 to supply Parcels 1 and 2, an agreement has been reached on the sharing of the cost of supplying the water.

B. WHEREAS there is a water system located on Parcel 2, composed of a well, a supply ditch for delivery of Klamath Irrigation District irrigation water, a pump with connected electrical service, and a system of pipes and connectors (hereafter all elements shall be collectively referred to as the "WS") for the purpose of supplying irrigation water to all properties listed.

C. WHEREAS it is the intention and purpose of the undersigned parties that the WS shall be used to provide an adequate supply of irrigation water to each of the parties and assure the continuous and satisfactory operation and maintenance of the WS for the benefit of the present and future owners, their heirs, successors and assigns of the properties connected thereto.

Agreement

The parties adopt the above Recitals as part of the agreement.

1) Grantor is the owners of real property in Klamath County, Oregon described as:

Parcel 1 and 2 of Land Partition 12-20, a re-plat of Parcel 2 of the minor land Partition 32-90 as amended by Property Line Adjustment 7-07, situated in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 20, Township 39 South, Range 9 East of the Willamette Meridian

2) LP 12-20 partitions the property into two parcels.

3) Parcel 2 contains 109.31 total acres. This represents 92.64% of the total acreage. Parcel 1 contains 8.69 acres. This represents 7.36% of the total acerate. All acres have irrigation rights.

4) Any piping that exclusively serves a single parcel shall be excluded from the definition of the WS. Each party shall have the right to install off the WS further piping, valves, or other plumbing which serves their property exclusively so long as it does not diminish the flow of water to the other party.

5) Each property shall have rights to withdraw water from said WS for use on the above-described parcels. Neither parcel shall enjoy a right of priority use over the other. The parties shall work together to coordinate extraction of water from the WS to maximize the amount and quality of water able to be extracted.

6) The Owners of Parcel 1 shall be responsible for 7.36% of the cost to maintain, operate, and repair the WS. Parcel 2 shall be responsible for 92.64% of the cost to maintain and repair the WS. Cost sharing shall not begin until both parcels begin drawing water from the WS. Once cost sharing begins, each Party shall pay their share of expenses promptly and directly to the service provider. Good faith challenges to expenses may only be undertaken in such a manner that does not impact services to the other party.

7) Each Parcel shall have an undivided ownership in the above-described WS equal to the percentage ownership described in paragraph 3 above and the right to take water from the WS and convey such water to their parcel by pipe.

8) Each party shall have the right to install additional lines or equipment that services their parcel solely. In the event such installation takes place, the parties to this agreement shall meet to negotiate in a good faith a re-allocation of shared expenses. If they are unable to come to terms, such dispute shall be submitted to the process described in Section 20 below.

9) Parcel 1 is granted the right to cross and recross the land of Parcel 2 for purposes related to maintenance, monitoring, testing, and repair of the WS. There shall be a 16-foot-wide easement on Parcel 2 as depicted on LP 12-20 for the benefit of Parcel 1.

10) Each parcel owner, their heirs, grantees and assigns, shall be solely responsible for the maintenance, repair, and replacement of the any pipes and other individual equipment which solely serves their said property. Individual pipes and other individual equipment are excluded from the definition of the WS. An owner shall repair or pay for, at their sole expense, any damage done to any other property which occurs during any such maintenance, repair and replacement and shall pay proportionate cost as detailed in paragraph 3 above of all future costs of maintenance, repair, replacement and improvement of the WS.

11) Each party's interest in the water from said WS is limited to supplying water for commercial and agricultural use on the above-described Parcels.

12) Grantor intends to sell Parcel 1 of the property in LP 12-20. This agreement shall bind and inure to each of said Parcels of land and be appurtenant thereto and run therewith.

13) In the event of any repair or replacement of the WS in excess of \$1,000.00 total cost, the owners agree to obtain the written consent of any other owner or owners prior to incurring repair costs. Further, in the event of any repair or replacement of the Well or WS the parties expressly agree to cooperate fully in allowing said repair or replacement to be made as soon as the necessary equipment, equipment operator and supplies can be obtained to make such repair or replacement. The parties further agree to pay for or to arrange for the payment of their respective share of the costs of said repair or replacement as soon as reasonably possible.

14) The owner of any parcel herein described may assign the rights contained in this agreement to any other landowner without consent of the other parcel owner, provided however said assignment shall not interrupt or diminish operation or quality of said WS. The assigning owner shall be responsible for all costs associated with the extension or expansion of the WS to service the new user.

15) In the event that any owner of any 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, the courts, including appellate courts, shall award the prevailing party in such a suit, action or proceeding such sums it may adjudge reasonable as attorney's fees.

16) The owners of the above-described parcels may agree to terminate this agreement by mutual written consent only. The owners of Parcel 1 may terminate this agreement by giving notice and disconnecting all plumbing which solely serves its parcel.

17) If the WS is separately metered for electricity. Each party will be responsible for a proportionate of the monthly/annual electrical bill according to the ownership percentage described in paragraph 3 above.

18) Each of the parties hereby agree that they will promptly repair, maintain, and replace all water pipes, mains, connections serving their specific parcel.

19) Emergency Situations. Each party shall have the right to act to correct an emergency and shall have access to the pertinent parcel in the absence of the other. An emergency shall be defined as the failure of any shared portion of the system to deliver water upon demand.

20) Dispute Resolution. Any dispute under this Agreement shall be required to be resolved by binding arbitration between the parties hereto. If the parties cannot agree on an arbiter, each party shall select one arbiter, at their own cost, and both arbiters shall then select a third. The cost for this selected arbiter shall be shared 50/50 between the parties. The third arbiter so selected shall arbitrate said dispute. The arbitration shall be governed by the rules of the Arbitration Association of Oregon then in force and effect.

21) Binding Effect. This Agreement will be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and permitted assigns.

22) No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or will be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.

23) Electronic and Facsimile Signatures. Electronic and facsimile transmission of any signed original document, and retransmission of any signed electronic or facsimile transmission, will be the same as delivery of an original. At the request of any party, the parties will confirm electronic or facsimile transmitted signatures by signing an original document.

24) 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.

25) 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.

26) Further Assurances. Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, to carry out the intent and accomplish the purposes of this Agreement.

27) 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.

28) Governing 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.

29) Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement will be brought against any of the parties in Klamath County Circuit Court of the State of Oregon.

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

31) Entire Agreement. This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

Remainder of Page Intentionally Left Blank. Signature and
Notary Lines to Follow.

Lloyd V. Howard
Lloyd V. Howard
Grantor

Barbara G. Howard
Barbara G. Howard
Grantor

STATE OF OREGON)
) ss
County of Klamath)

Personally appeared before me this 1st day of March 2021, 2021, the above-named Lloyd V. Howard and Barbara G. Howard, Grantors, and acknowledge the foregoing instrument to be his voluntary act.

Sonya June Wellman
Notary Public for Oregon
My commission expires: 08/19/2023

