

Return to:
AmeriTitle

513316AM

UPON RECORDING RETURN TO:
Carl W. Hopp, Jr., Attorney at Law LLC
210 NW Irving Avenue
Bend, OR 97703

Loree Fields
PO Box 171
Chemult, OR 97731
Ed Shuey
8133 Exploration Ave.
Las Vegas, NV 89131

2021-017904
Klamath County, Oregon
12/02/2021 02:48:01 PM
Fee: \$132.00

EASEMENT AND WATER WELL AGREEMENT

THIS EASEMENT AND WATER WELL AGREEMENT (Agreement) is entered into this 20th day of November, 2021 (effective date) by LOREE FIELDS (Fields) and ED SHUEY, JR. also known as ED SHUEY (Shuey).

RECITALS

- A. Fields is the owner of certain real property (Fields Property) described in Exhibit "A", attached hereto and by this reference incorporated herein.
- B. Shuey is the owners of certain real property (Shuey Property) described in Exhibit "B", attached hereto and by this reference incorporated herein.
- C. The Shuey property contains a well with well identification number L143823 . The well provides water to both the Fields property and the Shuey property.
- D. The well, pump house, buried pipeline, and buried power line are owned 51% by Loree Fields and 49% by Ed Shuey.
- E. The well, pump house, buried pipeline, and buried power line are located on the Shuey property. The well is located on Tax Lot 4100, Parcel 2 of Exhibit "B", 226 Damon Street, Chemult, Oregon and the pump house is on Tax Lot 4300, Parcel 4 of Exhibit "B", Chemult, Oregon
- F. A buried pipeline connects the well and pump house to the Fields properties.

G. Fields and Shuey desire that an Easement be granted by Shuey to Fields for access across the Shuey Property as necessary for access to the well, pump house, buried power line, and buried pipeline for use, maintenance, replacement, and repair.

H. Fields and Shuey have historically shared the well, pump house, buried power line, and buried pipeline without a written agreement.

I. Fields intends to sell her property and the parties seek to clarify ownership of the well, pump house, buried pipeline, and buried power line, maintenance of, replacement of, payment of power bill, and the terms for terminating the historic shared use.

J. Fields Property contains:

1. Motel-Tax lot 1300 109256 N Hwy 97 Chemult, Oregon. This is described in Exhibit "A" Parcel 2.
2. Restaurant-Tax lot 500 109115 N Hwy 97 Chemult, Oregon which includes a trailer home (not detitled) with address 109123 N Hwy 97 Chemult, Oregon. This is described in Exhibit "A" Parcel 5.
3. Residence-Tax lot 1200 109132 N Hwy 97 Chemult, Oregon. This is described in Exhibit "A" Parcel 1.
4. Residence-Tax Lot 1600 109280 N Hwy 97 Chemult, Oregon. This is described in Exhibit "A" Parcel 3.

K. Shuey Property contains:

1. Residence (trailer home)-Tax Lot 1500 no physical address. This is described in Exhibit "B" Parcel 1.

2. Residence-Tax Lot 4100 236 Damon Street Chemult, Oregon. This is described in Exhibit "B" Parcel 2.

3. Well-Tax Lot 4200 226 Damon Street Chemult, Oregon. This is described in Exhibit "B" Parcel 3.

4. Pump House-Tax Lot 4300 no physical address. This is described in Exhibit "B" Parcel 4.

A G R E E M E N T

NOW, therefore for good, fair, and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Fields and Shuey agree as follows:

1. **Recitals.** The above recitals are incorporated herein.

2. **Grants of Easement.**

(a) Shuey grants Fields an Easement across the Shuey Property 20 feet on either side of the center line of the buried pipe line and buried power line servicing the well and pump house for purposes of water delivery, maintenance and access to the well, pump house, buried pipeline, and buried power line.

(b) Shuey grants Fields an Easement across the Shuey Property 20 feet in diameter around the Water Well and around the pump house for purposes of operation and maintenance of the Well and Pump House. Fields may maintain but is not required to maintain nor in any way contribute to repair or replacement costs of the Well.

3. **Use of Easement Area.** This agreement is binding on the parties and their successors in interest. The party benefiting from the above Easements, their employees, agents, permitted assigns, and licensees (the Permitted Parties) may enter upon the Easement area for the following purposes (Permitted Uses):

The Permitted Parties are permitted to use, maintain, replace, and repair the well, the buried pipeline, the buried power line, and the pump house. Fields and Shuey are entitled to utilize any and all water to which their property is entitled pursuant to Oregon law.

4. Use of Water. Fields and Shuey obtain the water from the Well for utilization of lawn or noncommercial garden watering not to exceed one-half acre in area. Domestic purposes not exceeding 15,000 gallons per day, and single industrial or commercial purposes not exceeding 5,000 gallons per day. The single industrial or commercial use shall belong to Fields (for use on Tax Lot 500). The 15,000 gallons domestic purposes use shall be allocated: Fields 11,000 gallons per day (9,000 for the motel on Tax Lot 1300, 1,000 gallons per day to the trailer on Tax Lot 500, 1,000 gallons per day to the residence on Tax Lot 1200, 1,000 gallons per day to the residence on Tax Lot 1600) and Shuey 2,000 gallons per day (1,000 gallons per day to the trailer on Tax Lot 1500 and 1,000 gallons per day to the residence on Tax Lot 4100). The remaining 1,000 gallons per day shall be available as needed by Fields and Shuey. The one-half acre of lawn or noncommercial garden watering shall be allocated equally among the residential properties. Each party shall be allowed to utilize the water as set forth herein and if the Well or delivery system is unable to provide the water to each parties' land each party shall take a pro-rated amount based upon the total amounts of water to which they are entitled from the Well. In the event one party is not fully utilizing the water to which they are entitled, the other party may utilize so as to maximize water usage on that parties' property. The parties shall make reasonable efforts to cooperate for purposes of allowing one party to use more than its share of the daily output of the Well when the

other party is not in need of its entire share on a particular day or during a particular period.

5. Intent About Water. Except as otherwise expressly provided in this Agreement, the parties agree that it is their intent to allow each Party to use its share of water in accordance with this agreement in any lawful manner. Each Party shall reasonably cooperate with the other to the extent necessary to allow such lawful use, provided that any such lawful use by a party of its rights under this Agreement does not materially interfere with the other Party's use of its rights under this Agreement. Any Court of competent jurisdiction interpreting this Agreement may rely on this provision to inform its determination.

6. Utility Costs. The costs of utilities, taxes, and insurance used to run the well and pump shall be paid as follows: by Fields or the owner of Tax Lot 500-utilities, by Shuey or the owner of Tax Lot 4300-taxes and insurance. From time to time and at least annually, the parties shall discuss the amount of the utility bill, taxes, and insurance for the previous year and whether there is to be an adjustment on the responsibility for payment based on water usage. If the parties cannot agree, meters shall be installed to measure water usage by each party's property. If water meters are installed, each party shall be responsible for the cost of the meters measuring the water usage by their property. The parties shall then divide the utility, tax, and insurance bills based on each party's proportionate use of the water. The owner of Tax Lot 500 shall be responsible for paying the utility bill and the owner of Tax Lot 4300 shall be responsible for paying the insurance, and tax bills. The party paying the utility bill and the party paying the tax and insurance bills shall be responsible for collecting the other party's share of the utility, tax,

and insurance. Payment to the responsible party shall be made within 30 days of invoicing from the responsible party.

7. Compliance with Laws and Regulations. Neither party shall use the well or well water in violation of any applicable regulation or law.

8. Benefit and Burden. The parties acknowledge that each of the properties is both benefitted and burdened by this Easement and Water Well Agreement. The Easement and Water Well Agreement declared herein shall run with the land as to all of the properties burdened and benefitted by the Easement and Water Well Agreement and any lawful land division thereof. The rights, covenants and obligations contained in this Easement and Water Well Agreement shall bind, burden and benefit the parties, their successors, heirs, assigns, tenants, employees, guests, invitees, licensees, contractors, agents, mortgages and beneficiaries under a deed of trust. Any reference to a party shall apply only so long as a party owns a property, and thereafter such reference shall apply to such party successor or assign. Any transfer of any parties' property shall automatically be deemed, by acceptance of title of such property, to have assumed all of the obligations set forth in this Agreement relating to such property. The party shall, when such transfer is consummated, be relieved of all liability that arises thereafter under this Agreement, but such party shall not thereby be relieved of liability that arose before such time and which remains unsatisfied. A party has the right to assign to any tenant of the party, its' rights and obligations under this Agreement throughout the terms of the Lease(s) to such tenant(s) or for a shorter time as the party may agree, but this shall not release the party from its obligations or liabilities under this Agreement.

9. Indemnity. Parties agree to indemnify each other and to defend and save each other harmless from and against any and all claims of third parties for damages suffered, and any other loss, cost or other expense which is incurred by a party, or any claim, demand or action asserted against a party, arising out of that parties' exercise of the rights granted herein.

10. Attorneys' Fees. If any suit or action arising out of or related to this Agreement is brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including without limitation reasonable attorney fees and fees and costs of experts and consultants, copying, courier and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party or parties in such suit or action, including without limitation any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.

11. Exceptions of Record. This Easement is granted subject to all prior encumbrances of record.

12. Severability. Any provision of this Agreement that is deemed invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable the remaining provisions of this Agreement.

13. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received three (3) days after deposit in the United States Mail.

If to Fields: Loree Fields
PO Box 171
Chemult, OR 97731

If to Shuey Ed Shuey
8133 Exploration Ave.
Las Vegas, NV 89131

Any notice of alleged default by one party under this Agreement shall also be delivered to any lender holding a security interest in that party's property that is given written notice to the other party of its desire to receive such notices and has provided them with the necessary contact information (a "Lender").

14. Further Assurances. The parties each agree, at the request of the other party, at any time and from time to time after the date hereof, to execute and deliver all such further documents as may be reasonably necessary or appropriate in order to confirm, record or carry out the provisions of this Agreement, including, without limitation, such documents as may be required to maintain and improve the Well Registration.

15. Time is of the Essence. Time is of the essence of this Agreement.

16. Lender Protections. The Parties agree that they shall not amend the material terms of this Agreement without the prior written consent of the parties' Lenders. The Parties agree that either party may collaterally assign this Agreement to any Lender as part of securing financing for that parties' property, and that the other party shall execute any documents necessary or desirable for such an assignment as reasonably requested by the Lender.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed
on the date first above written.

Loree Fields
LOREE FIELDS

Ed Shuey, Jr.
ED SHUEY, JR.

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing instrument was acknowledged before me on this 2 day of
December, 2021 by Loree Fields.

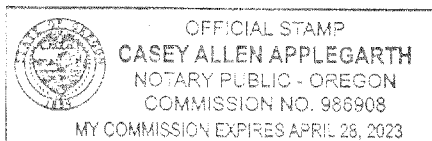
Amanda T. Garcia
Notary Public for Oregon
My Commission Expires: 02/14/23



STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing instrument was acknowledged before me on this 26th day of
November, 2021 by Ed Shuey, Jr.

Casey Allen Applegarth
Notary Public for Oregon
My Commission Expires: 4/28/23



Unofficial
Copy