

WATER WAY EASEMENT
AND
WELL AGREEMENT

MTC 35933KR

THIS AGREEMENT made by and between EVERETT V. WILSON and ELFIE V. WILSON (aka Elfi L. Wilson, Husband and Wife, hereinafter called "WILSON", and ANNA M. MERCHANT, (it being the intention of the parties that the said individuals do not take the title in common but with the right of survivorship; that is, that the fee shall rest in the survivor of the said individuals), hereinafter called "MERCHANT".

R E C I T A L S

A. WHEREAS, WILSON, either individually or jointly, were previously and are the owners of certain parcels of real property, which said parcels of real property utilize water from a well, located on one specific parcel of property; and

B. WHEREAS, as a result of a sale by WILSON to MERCHANT, one of the said parcels of property is to pass into the ownership of MERCHANT;

C. WHEREAS, WILSONS and MERCHANT desire to enter into an agreement to allow for the use and maintenance of the well, pump, pipes and casings, as well as to enter into an agreement to allow for the maintenance and use thereof; and

D. WHEREAS, as a result of the sale from WILSONS to MERCHANT is to become the owner of certain real property located in the County of Klamath, State of Oregon, legally described as follows, to-wit:

Lot 34 in Block 49, KLAMATH FALLS FOREST ESTATES, HIGHWAY 66 UNIT, PLAT NO. 2, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon

hereinafter referred to as "MERCHANT PROPERTY"; and

WHEREAS, WILSONS have and continue to maintain ownership of certain real property located in the County of Klamath, State of Oregon, legally described as follows, to-wit:

Lot 33 in Block 49, KLAMATH FALLS FOREST ESTATES, HIGHWAY 66 UNIT, PLAT NO. 2, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon

hereinafter referred to as "WILSON PROPERTY".

W I T N E S S E T H:

The parties agree as follows:

1. That WILSONS and MERCHANT shall each have a certain well located on "WILSONS PROPERTY", which said well shall be hereinafter referred to as "JOINT WELL", and
2. WILSONS grant to MERCHANT an easement to appropriate water from "JOINT WELL" hereinabove described.
3. Each party grants to the other the right of ingress and egress to use and maintain the well, pump, pipings and casings, as they are now situated, or may be hereafter replaced.
4. Each of the parties, and/or their successors in interest, shall pay one-half of all costs to maintain in the present condition the well, pump, pipings and casings for "JOINT WELL". The

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parties agree that before any major expense is incurred, the parties shall jointly agree to the nature and amount of such expenditure, before work is commenced, and before any such expense is incurred.

5. Each of parties hereto agree that they shall share the water produced by the said well, and that MERCHANT shall be limited to one domestic water well hookup, unless this Agreement shall be modified by the mutual agreement of the parties. It is recognized by the parties that at the present time, the pump is operated from off of the electric meter for "WILSONS PROPERTY". For so long as the pump continues to operate from off of the meter servicing "WILSONS PROPERTY", MERCHANT shall be required to pay to WILSONS the sum of \$12.50 for each month that MERCHANT shall utilize the pump (connected to WILSONS' electric meter) to withdraw water from the well. Nothing contained in this agreement shall preclude MERCHANT from installing an additional pump and separate electrical service, in which event the responsibility for payment of any monthly sums to WILSON as reimbursement for electrical service shall terminate.

6. In the event that any party of this Agreement fails to pay his or her proportionate share of costs upon demand, the other party may pay the same, and further may terminate the defaulting party's right to use the water during the period of default, and may file a lien upon the real property of the defaulting party by filing a "NOTICE OF LIEN" under this agreement with the County Clerk of Klamath County, Oregon. Any non-defaulting party may foreclose the lien as provided by ORS Chapter 88 and shall be entitled to attorney fees in such foreclosure, both at trial and on appeal of any such action.

7. WILSONS further grant an easement 10 feet in width over and across "WILSONS PROPERTY" which said easement or easements shall run from "JOINT WELL" as hereinabove described in a generally northerly direction to a point on the northerly property line of "MERCHANT PROPERTY".

8. The easement hereinabove granted allows MERCHANT and their successors in interest the right to go upon said property for the purpose of repair, maintenance, and installation of replacement or new piping, if such replacement or repair should become necessary in order to allow the continued enjoyment of the water from the well by MERCHANT. In the event that such repair or replacement of new piping is necessary, MERCHANT agrees to restore the surface of "WILSONS PROPERTY" as near as possible to the same condition as it was in before such installation was commenced.

9. Excepting only inasmuch as shall presently be in existence, there shall not be constructed or maintained within one hundred feet (100') radius of the said well, so long as the same is operated to furnish water for domestic consumption, any of the following: cesspools, sewers, privies, septic tanks, drain fields, manure piles, garbage of any kind or description, barns, chicken houses, rabbit hutches, pig pens or other enclosures or structures for the keeping or maintenance of fowls or animals, or storage of liquid or dry chemicals, herbicides or insecticides.

10. The rights created by this Agreement shall run with the land and in the event any party sells the land subject to the within Water Way Easement and Well Agreement, the purchaser shall be bound by this agreement.

11. This agreement shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective heirs, executors, administrators, successors and assigns. In construing this instrument, and where the context so

requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF the parties have set their hands and seals the day and year set forth hereinbelow.

Everett V. Wilson
EVERETT V. WILSON

Date: 10/5/95

Elfie L. Wilson
ELFIE L. WILSON

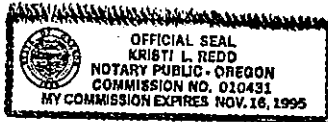
Date: 10/5/95

Anna M. Merchant
ANNA M. MERCHANT

Date: 10/5/95

STATE OF OREGON, County of Klamath) ss.

PERSONALLY appeared before me on October 5, 1995, the above-named EVERETT V. WILSON and ELFIE L. WILSON, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.



Kristi L. Redd
NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/16/95

STATE OF OREGON, County of Klamath) ss.

PERSONALLY appeared before me on October 5, 1995, the above-named ANNA M. MERCHANT and acknowledged the foregoing instrument to be her voluntary act and deed.



Kristi L. Redd
NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/16/95

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Company the 6th day of October A.D. 19 95 at 9:01 o'clock A M., and duly recorded in Vol. M95 of Deeds on Page 27014.

FEE \$40.00

Bernetha G. Letsch, County Clerk
By Annette Mueller