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WALTER GOWELL
ATTORNEY
PO BOX 480
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OFFICIAL YAMHILL COUNTY RECORDS
BRIAN VAN BERGEN, COUNTY CLERK

201808569



\$116.00

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DMR-EDMR Cnt=1 Stn=3 SUTTONS
\$40.00 \$5.00 \$11.00 \$60.00

Space above this line for Recorder's Use

WELL EASEMENT AGREEMENT

This Well Easement Agreement (this "Agreement") is made this 1 day of June, 2018, by and between Kaye D. Brand and Sharon R. Brand, as Trustees of the Brand Family Trust dated December 19, 2017 ("Brand" and "Grantor"), and Jennifer Wendy Abdelnour, Trustee under Trust Declaration dated July 9, 1991 ("Abdelnour" and "Grantee").

RECITALS

- A. Whereas, Brand owns the property located adjacent to 14180 NW Berry Creek Road in McMinnville, Oregon, legally described in Exhibit A attached hereto (the "Brand Property"). Abdelnour owns the property located at 14190 NW Berry Creek Road in McMinnville, Oregon, legally described in Exhibit B attached hereto (the "Abdelnour Property"); and
- B. Whereas, in 2001, Brand and Abdelnour agreed that Abdelnour could drill and install a well system and related facilities serving the Abdelnour Property on the Brand Property in the location legally described in Exhibit C and depicted in Exhibit D (the "Easement Area"). In August 2001, Abdelnour constructed the well and related facilities. The parties now desire to document the terms and conditions regarding the well and the Easement Area.

Now, therefore, for good and valuable consideration, the sufficiency and receipt of is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Grant of Well Easement and Irrevocable License.** In consideration of good and adequate consideration and the mutual covenants contained herein, Brand hereby grants to Abdelnour, its successors and/or assigns, a non-exclusive perpetual easement under, on, over and across the Easement Area for the purpose of operating, using, maintaining, repairing, replacing, and accessing a well (the "Well"), pump, pump structure, riser, pipes, and its related facilities and drawing water therefrom (together, the "Well Facilities"), together with a right of access over the Brand Property reasonably necessary to access the Easement Area (together, the "Easement"). In the event that a Brand Residence becomes a permitted user under Section 3 below, then Abdelnour grants to each Brand Residence owner an irrevocable license for the purpose of operating, using, maintaining, repairing, replacing, and accessing the Well Facilities. That portion of transmission lines that service only some and not all of the residences connected to the Well shall not be

considered a part of the Well Facilities.

2. **Maintenance of Well Facilities.** Except as provided in Section 3 below, Abdelnour, at its sole cost and expense, shall operate, maintain, and repair the Well Facilities. Brand shall have no responsibility for the Well Facilities, including the construction, maintenance, repair, restoration, or operation thereof, except for damage to the Well Facilities caused by Brand and/or any of Brand's agents, contractors, employees, invitees, and licensees and except as provided in Section 3 below. If Abdelnour disturbs any landscaping in the performance of any maintenance or repair of the Well Facilities, Abdelnour shall repair and restore such damaged property to the same condition that existed before such damage.
3. **Brand's Use of the Easement Area and Well.** Brand shall not construct any improvements in the Easement Area. Brand shall have the right to use the Easement for any purpose so long as such use does not impair the Well Facilities, provided, however, that in no event shall Brand grant any rights to any third parties relative to the Easement Area or the Well Facilities, except as expressly provided in this Section. The parties acknowledge that the Brand's adjacent property is currently served by a separate well and is not subject to this Agreement. Brand anticipates that there may be up to two additional residences to be constructed on the Brand Property (each, a "Brand Residence," but specifically excluding the adjacent property currently served by a separate well). Brand shall have the unconditional right to connect (a) one Brand Residence to the Well and (b) a second Brand Residence to the Well so long as after such connection of the second Brand Residence, there remains at least fifteen (15) gallons per minute available for use by the Abdelnour Property and the first Brand Residence. Each residence connected to the Well shall pay its proportionate share of all maintenance, repair and other costs in connection with the Well Facilities (i.e., if there are two Brand Residences connected to the Well, then each Brand Residence shall be allocated one-third of such costs; if there is only one Brand Residence connected to the Well, then such Brand Residence shall be allocated one-half of such costs). Each additional such connection shall be without liability or cost to any existing user for the costs of such physical connection. Neither Brand nor Abdelnour makes any representation or warranty as to the quality, quantity, or fitness of such water supply from the Well. In no event shall any existing users have any liability to a new user of the Well for any claims in connection therewith, including without limitation, any claims in connection with the Well running dry or any illness caused by the water. The parties will cooperate in good faith effort to limit the use of the Well to amounts that are exempt from the need to apply for and obtain a ground water permit from the Oregon Department of Water Resources.
4. **Binding Effect.** This Agreement is binding on and will inure to the benefit of Abdelnour, Brand, and their respective successors and assigns. This Agreement and the Easement shall benefit and bind and burden the Brand Property and shall be appurtenant to, bind and benefit the Abdelnour Property.
5. **Remedies.** TIME IS OF THE ESSENCE REGARDING THIS AGREEMENT. In the event of failure by either party to perform its obligation under this Agreement, following ten days' written notice of default, the non-defaulting party shall have the right to pursue any and all remedies available at law or in equity. In the event that any user of the Well fails to pay for their share of the costs relating to the Well Facilities, then Brand and Abdelnour agree to submit to the jurisdiction of the Yamhill County Small Claims Court (subject to and to the extent of such

jurisdiction) to resolve any such payment dispute.

6. **Attorney Fees.** In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.
7. **Applicable Law.** This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
8. **Miscellaneous.** This Agreement contains all of the representations, understandings, and agreements of the parties with respect to matters contained herein. The recitals are hereby incorporated into this Agreement. This Agreement may only be amended by a written instrument signed by both parties.
9. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

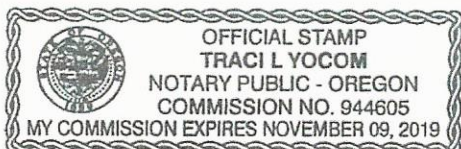
GRANTOR/BRAND:

Kaye D. Brand Trustee
Kaye D. Brand, Trustee of the Brand
Family Trust dated December 19, 2017

Sharon R. Brand, Trustee of the Brand
Sharon R. Brand, Trustee of the Brand
Family Trust dated December 19, 2017

STATE OF OREGON)
) ss:
COUNTY OF Yamhill)

This instrument was acknowledged before me on this 12th day of June, 2018,
by Kaye D. Brand, Trustee of the Brand Family Trust dated December 19, 2017.

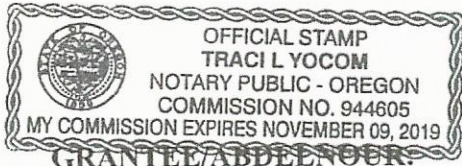


NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/9/17

STATE OF OREGON)

COUNTY OF Yamhill)ss:

This instrument was acknowledged before me on this 12th day of June, 2018,
by Sharon R. Brand, Trustee of the Brand Family Trust dated December 19, 2017.



Taj L. Yocom
NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/9/19

Jennifer Wendy Abdelnour, Trustee
Jennifer Wendy Abdelnour, Trustee
under Trust Declaration dated July 9, 1991

STATE OF OREGON)
COUNTY OF Yamhill)ss:

This instrument was acknowledged before me on this 15th day of June, 2018,
by Jennifer Wendy Abdelnour, Trustee under Trust Declaration dated July 9, 1991.



Sara Beth Brown
NOTARY PUBLIC FOR OREGON
My Commission Expires: June 29 2019

EXHIBIT A
PAGE 1 OF 1

Parcel 1:

BEGINNING at an iron pipe at the Northeast corner of a 10 acre tract, said point being on the North line of the Charles Berry Donation Land Claim and East 886.79 feet from the Northwest corner of the Charles Berry Donation Land Claim, Township 4 South, Range 5 West, Willamette Meridian; thence East along the North line of the Donation Land Claim 382.44 feet to an iron pipe; thence South 1262.47 feet to an iron pipe in the center of county road; thence along the center of the county road North 75°00' West 135.85 feet to an iron pipe, North 75°00' West 240.28 feet to an angle point in the county road; thence North 67°22' West 20.37 feet to an iron pipe; said point also being the Southeast corner of a 10 acre tract; thence North 1157.28 feet to the point of beginning.

Also, beginning at an iron pipe set on the North line and 1269.23 feet East of the Northwest corner of the Charles Berry Donation Land Claim in Section 11, Township 4 South, Range 5 West of the Willamette Meridian, Yamhill County, Oregon, said iron pipe marking the Northeast corner of a certain 10.6 acre tract as surveyed in County Survey No. P-4171, and running thence East along claim line, 169.5 feet; thence South 1307.89 feet to the center of County Road; thence along center of said road North 75°00' West, 175.47 feet to the Southeast corner of the above mentioned 10.6 acre tract; thence North along the East line of said tract, 1262.47 feet to the place of beginning.

EXCEPTING THEREFROM:

A parcel of land in the Charles Berry Donation Land Claim in Township 4 South, Range 5 West, Willamette Meridian, more particularly described as follows: Beginning at a point on the West line of a certain 10.6 acre tract under contract from Carter A. Kvavle and Helen Kvavle to Kaye D. Brand and Sharon R. Brand, husband and wife, said point being East 886.79 feet and South 625 feet from the Northwest corner of said Berry Claim and running thence East 382.44 feet to the East line of said 10.6 acre tract; thence South along East line of said tract, 228 feet, thence West 382.44 feet to the West line of said tract; thence North 228 feet to the place of beginning and containing 2 acres of land, more or less.

Also an easement for a roadway 20 feet in width, 10 feet on each side the following described centerline: Beginning at a point on the South side of the above described 2 acre tract, 250 feet East of the Southwest corner thereof and running thence South to the center of County Road No. 228.

ALSO EXCEPTING THEREFROM:

A portion of the Charles Berry Donation Land Claim in Section 11, Township 4 South, Range 5 West of the Willamette Meridian in Yamhill County, Oregon, described as follows:

BEGINNING at an iron pipe at the Southwest corner of County Survey No. 4828, dated December 30, 1969, and being also the Southwest corner of the Scott tract as in Deed recorded November 4, 1968, in Film Volume 73, Page 216, Deed and Mortgage Records; thence North 304.28 feet to an iron pipe; thence South 26°27' East 396.74 feet to an iron pipe set in the center of County Road No. 228; thence North 75°00' West 163.00 feet to a point; thence North 67°22' West 20.37 feet to the place of beginning.

ALSO EXCEPTING THEREFROM the following described tract:

A tract of land in Section 11, Township 4 South, Range 5 West of the Willamette Meridian, Yamhill County, Oregon, being part of the KAYE BRAND and SHARON BRAND tract described in Instrument recorded May 2, 1983 in Film Volume 176, Page 1730, Yamhill County Deed Records, more particularly described as follows:

BEGINNING at the Northwest corner of the Charles Berry Donation Land Claim; thence East 886.79 feet along the North line of said Berry Claim to an iron pipe at the Northwest corner of said Brand tract and the TRUE POINT OF BEGINNING; thence South 00°00'40" West 300.00 feet along the West line of said Brand tract to an iron rod; thence East 376.00 feet to an iron rod; thence South 298.00 feet to an iron rod; thence East 175.29 feet to an iron rod on the East line of said Brand tract; thence North 598.00 feet to an iron pipe at the Northeast corner of said Brand tract; thence West 551.20 feet to the point of beginning.

TOGETHER WITH a 30 feet wide easement the centerline of which is described as follows:

BEGINNING at a point that is on the South line of and 15.00 feet West of the Southeast corner of the above described tract; thence South 75.0 feet; thence South 42°47' West 184.8 feet to the center of the existing roadway; thence Southerly along said existing roadway to Berry Creek Road as shown on Yamhill County Survey CSP-8448.

EXHIBIT B
PAGE 1 OF 1

Order No. 40-0342503

A tract of land in Section 11, Township 4 South, Range 5 West of the Willamette Meridian, Yamhill County, Oregon, being part of the Kaye Brand and Sharon Brand tract described in instrument recorded May 2, 1983 in Film Volume 176, Page 1730, Yamhill County Deed Records, more particularly described as follows:

BEGINNING at the Northwest corner of the Charles Berry Donation Land Claim; thence East, 886.79 feet along the North line of said Berry Claim to an iron pipe at the Northwest corner of said Brand tract and the TRUE POINT OF BEGINNING; thence South $00^{\circ} 00' 40''$ West, 300.00 feet along the West line of said Brand tract to an iron rod; thence East, 376.00 feet to an iron rod; thence South, 298.00 feet to an iron rod; thence East, 175.29 feet to an iron rod on the East line of said Brand tract; thence North, 598.00 feet to an iron pipe at the Northeast corner of said Brand tract; thence West, 551.20 feet to the POINT OF BEGINNING.

ALSO a 30 foot wide easement the centerline of which is described as follows:

BEGINNING AT A POINT that is on the South line of and 15.00 feet West of the Southeast corner of the above described tract; thence South, 75.0 feet; thence South $42^{\circ} 47'$ West, 184.8 feet to the center of an existing roadway; thence Southerly along said existing roadway to Berry Creek Road as shown on Yamhill County Survey CSP-8448.

WT&E 1245-1-2-2

EXHIBIT C

EXPIRES 31 DECEMBER 2018

Leland MacDonald & Assoc., LLC
Land Surveyors
3765 Riverside Drive
McMinnville, OR 97128
Phone: 503-472-7904
Fax: 472-0367
11 April 2018



Description of a private utilities easement for: Kaye Brand

An easement located in Section 11, Township 4 South, Range 5 West of the Willamette Meridian in Yamhill County, Oregon, across a portion of those tracts of land described by deed from DONALD L. KAVALE and ROBERT CARL KVAVLE to KAYE D. BRAND and SHARON R. BRAND and recorded in Volume 187, Page 2468, Deed Records Yamhill County, Oregon, and by Deed from CARTER A. KVAVLE and HELEN KVAVLE to KAYE D. BRAND and SHARON R. BRAND and recorded in Volume 76, Page 1702, Deed Records Yamhill County, Oregon, said easement being 10 feet in width lying 5 feet on each side of the centerline, which is more particularly described as follows:

Commencing at the southeast corner of said BRAND tract said point being on the centerline of Berry Creek Road; Thence North $50^{\circ}04'54''$ West 162.78 feet to the POINT OF BEGINNING; thence North $36^{\circ}46'08''$ West 13.35 feet; thence North $36^{\circ}46'08''$ West 87.20 feet to the beginning of a curve having a radius of 119.07 feet and being concave to the east; thence Northerly 100.34 feet along said curve (Chord= North $12^{\circ}37'39''$ West 97.40 feet); thence North $11^{\circ}30'49''$ East 121.15 feet; thence North $26^{\circ}34'10''$ East 70.98 feet to the beginning of a curve having a radius of 108.65 feet and being concave to the west; thence Northerly 133.92 feet along said curve (Chord= North $8^{\circ}44'31''$ West 125.60 feet) to the beginning of a non-tangent curve having a radius of 20.00 feet and being concave to the east; thence Northerly 20.43 feet along said curve (Chord= North $14^{\circ}13'37''$ West 19.56 feet); thence North $15^{\circ}02'34''$ East 42.00 feet; thence North $2^{\circ}47'25''$ East 64.07 feet to a point on the south line of that tract of land described by deed from GEORGE J. ABDELNOUR & JENNIFER WENDY ABDELNOUR to JENNIFER WENDY ABDELNOUR (Trustee) and recorded in Instrument No. 200402464, said point on south line bears WEST 160.28 feet from the southeast corner of said ABDELNOUR tract, the sidelines to extend or shorten with the south line of said ABDELNOUR tract.

End of Description

EXHIBIT "D"

KAYE D. BRAND & SHARON R. BRAND

Location: The Northeast 1/4 of Section 11, Township 4 South, Range 5 West, Willamette Meridian, Yamhill County, Oregon.

Tax Lot: 4511-100

Date: 11 April 2018

Scale: 1"=100'

Narrative

The purpose of this survey is to show a private utilities easement for KAYE D. BRAND & SHARON R. BRAND over the land described by deed to ABDELNOUR, recorded on February 11, 2004 in Instrument No. 200402464 Deed Records, Yamhill County, Oregon. The Basis of Bearings is along the east line of the BRAND tract recorded in Volume 187, Page 2468 and is established by measurements to monuments shown and described hereon.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
January 16, 2002
LELAND A. MACDONALD
53226

Expires 31 December 2018

Legend

• = monument found, flush to 0.2' down, in good condition unless otherwise stated. Origin stated if known.

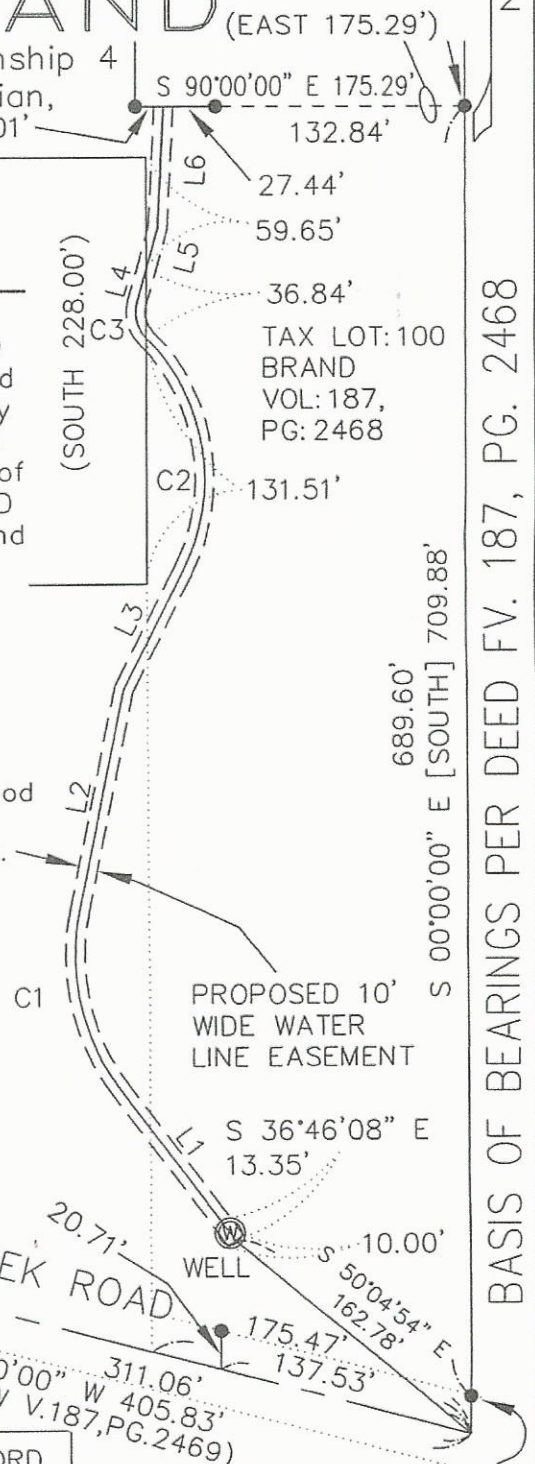
(-----) = Data of record

----- = Easement

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N36°46'08"W	87.20
L2	S11°30'49"W	121.15
L3	N26°34'10"E	70.98
L4	S15°02'34"W	18.52
L5	S15°02'34"W	23.47
L6	N02°47'25"E	64.07

CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA ANGLE	CHORD BEARING	CHORD DISTANCE
C1	119.07	100.34	48°16'58"	S12°37'39"E	97.40
C2	108.65	133.92	70°37'23"	N08°44'31"W	125.60
C3	20.00	20.43	58°32'23"	S14°13'37"E	19.56



3/4" Iron Pipe per CS-4202. Found 1/2" Iron pipe SOUTH 0.23 feet, origin unknown. Held both on the east line of said BRAND tract. #8608

