

GRANT OF WATERLINE EASEMENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, BENNETT HOMES AND REALTY, a Montana corporation of P. O. Box 399, Thompson Falls, Montana, joined in conveyance by OLIVE F. GRANT, individually and as Personal Representative of the estate of DAVID H. GRANT, does hereby grant to the TOWN OF THOMPSON FALLS, in Sanders County, Montana, a perpetual easement to construct, install, maintain, repair and replace underground water and electrical lines on a strip of land twenty (20) feet in width more particularly as follows:

A tract of land lying in the Southwest quarter of Section 4, Township 21 North, Range 29 West, P.M.M., Sanders County, Montana, and more particularly described as follows:

Commencing at the Section corner common to Sections 4, 5, 8, and 9, Township 21 North, Range 29 West, P.M.M.; thence North $03^{\circ}07'08''$ West along the Westerly boundary of Section 4 a distance of 644.54 feet to the True Point of Beginning; thence North $89^{\circ}48'34''$ East a distance of 811.29 feet; thence North $85^{\circ}07'23''$ East a distance of 612.02 feet; thence South $86^{\circ}45'26''$ East a distance of 270.88 feet; thence South $73^{\circ}17'30''$ East a distance of 195.92 feet; thence South $61^{\circ}55'49''$ East a distance of 435.54 feet; thence North $43^{\circ}47'51''$ East a distance of 534.20 feet; thence North $00^{\circ}18'32''$ West a distance of 20.68 feet to a point lying on the Northerly boundary of a tract of land shown on Certificate of Survey Number 264, Office of Clerk and Recorder, Sanders County, Montana; thence North $89^{\circ}48'34''$ East along said Northerly boundary a distance of 20.00 feet to the Northeast corner of said tract (C. of S. No. 264); thence South $00^{\circ}18'32''$ East along the Easterly boundary of said tract a distance of 28.74 feet; thence South $43^{\circ}47'15''$ West a distance of 589.87 feet; thence North $52^{\circ}21'18''$ West a distance of 190.00 feet; thence North $61^{\circ}55'49''$ West a distance of 246.16 feet; thence North $73^{\circ}17'30''$ West a distance of 195.61 feet; thence North $86^{\circ}45'26''$ West a distance of 269.47 feet; thence South $85^{\circ}07'23''$ West a distance of 611.41 feet; thence South $89^{\circ}48'34''$ West a distance of 812.14 feet to the Westerly boundary of said Section 4; thence North $00^{\circ}07'08''$ West a distance of 20.00 feet to the point of beginning.

The Grantors further agree to allow reasonable access to and from said easement for the purposes of construction and maintenance of the waterline to be placed on the easement.

IN WITNESS WHEREOF the undersigned have executed the Agreement

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on the year and date set opposite their respective signatures.

7-22-81
Date

Olive F. Grant
Olive F. Grant
BENNETT HOMES REALTY
David S. Bennett, President

7-22-81
Date

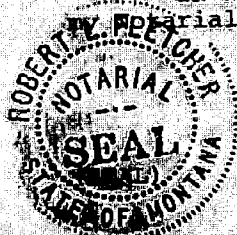
ATTEST:

David S. Bennett
Secretary

STATE OF MONTANA)
:ss.
County of Sanders)

On this 22nd day of July, 1981, before me, a Notary Public for the above named State, personally appeared OLIVE F. GRANT, individually and as personal representative for the estate of DAVID H. GRANT, deceased, known to me to be the person described in and who executed the foregoing instrument, and acknowledged to me that she executed the same.

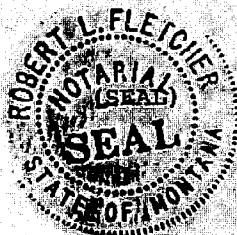
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Robert L. Fletcher
Notary Public for State of Montana
Residing at Thompson Falls
My Commission expires 11-17-81

STATE OF MONTANA)
:ss.
County of Sanders)

On this 22nd day of July, 1981, before me, a Notary Public for the above State, personally appeared DAVID S. BENNETT, known to me to be the President of the Corporation that executed the within instrument and acknowledged to me that such corporation executed the same.



Robert L. Fletcher
Notary Public - State of Montana
Residing at Thompson Falls, Montana
My Commission expires 11-17-81

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Filed for Record 14 days 8-4-81
of 1981 at Thompson Falls Montana
by David S. Bennett Secretary
David S. Bennett Deputy

DECLARATION OF COMMUNITY WELL AND WATER USERS' ASSOCIATION

DECLARATION Made this 22 day of April, 1981,
by BENNETT HOMES & REALTY, Star Rt 2 Box 1 Thompson Falls, Montana,
59873, hereinafter called Declarant.

WHEREAS the Declarant is the owner of 49.7 acres of real
property located in the Southwest Quarter (SW $\frac{1}{4}$) of Section 4, Town-
ship 21 North, Range 29 West, P.M.M., Sanders County, Montana, as
more particularly described by Certificate of Survey No. 264
on file and of record in the office of the Clerk and Recorder of
Sanders County; and

WHEREAS the Declarant has caused to be surveyed and platted a
portion of said real property into five (5) lots, a road and a private
park known as Ashley Creek Addition No. 1 to the Town of Thompson
Falls which is more particularly described by the recorded plat there-
of in the office of the Clerk and Recorder of Sanders County; and
which is hereinafter referred to as the "Subdivision"; and

WHEREAS there is located North of the Subdivision on a portion
of the 49.7-acre tract owned by the Declarant a ground water well; and

WHEREAS said well is intended as a community water well for the
benefit of the present and future owners of property within the Sub-
division and the present and future owners of such other portions of
the Declarant's property which may be subdivided or otherwise
developed for residential, commercial or agricultural use; and

WHEREAS the Declarant desires to establish an agreement and an
organization to accomplish the distribution of the benefits and obli-
gations of said community water well;

NOW, THEREFORE, in consideration of the mutual covenants here-
inafter imposed on the present and future owners of the said 49.7-
acre tract and the existing and future subdivisions thereof, the
Declarant does hereby declare and provide as follows:

1. The above-described water well shall be a community water
well, and the owners of each of the five lots within the Subdivision
shall be the owners of undivided interests in and to said water well,
together with the water obtained therefrom, well casing, pump, and
pumping facilities now existing and hereinafter installed, subject to
the provisions hereinafter contained for the modification of such
shares of ownership upon expansion of the community water well and
distribution system to serve other users within the lands described
by Certificate of Survey No. 264. The shares of ownership shall
be equal so that appurtenant to each of the five Subdivision lots
which now exist, there shall be an undivided one-fifth (1/5) interest
in the well and appurtenances thereto described above, but as herein-

after provided such fractional share may be modified upon the development of additional uses as hereinafter described.

The owner of each lot or segregated parcel now existing or hereinafter described shall also have an easement for the repair and maintenance of a water line from the existing well to an exterior boundary of the lot or segregated parcel to be benefitted. Said easement shall be ten (10) feet in width, and its centerline shall be the location of the water line as installed. The Declarant shall have the discretion to direct the course of the easement from the well to the exterior boundary of the lot or segregated parcel which is benefitted and the Declarant shall further have the discretion to specify the location, size and type of water lines for the conveyance of water from the well to respective points of usage as such design shall be approved by the Montana State Department of Health or such other agencies as may have jurisdiction to make such determinations.

2. The use, maintenance, repair, replacement and operation of the water system shall be governed by an Association which shall be called the Ashley Creek Addition Water Users' Association. The principal place for the transaction of its business shall be at Thompson Falls, Montana, until there shall be enough members of the Association to hold an election of officers at which time the members may select another location within Sanders County, Montana, to be the principal place for the transaction of its business.

3. The general purposes of this Association shall be to maintain, repair, replace and operate the water system once constructed to Montana State Department of Health standards by the Declarant. The Association shall also assess each lot owner for the operation, maintenance, repair and replacement of the water system as hereinafter set forth.

4. The initial membership of the Association shall consist of owners of the five lots of Ashley Creek Addition No. 1. "Owner" for the purpose of this Declaration shall mean every person or entity who is a record owner of a fee interest in any lot or segregated parcel which is subject to this Declaration. Record owners who have sold any lot under contract, notice of which is recorded, shall not be considered owners, while the Purchaser of any lot under contract, notice of which is recorded, shall be considered an owner for all purposes herein. When more than one person holds such interest in any lot, the vote for such lot for any purposes relating to the Association shall be exercised as such persons among themselves shall determine, but in no event shall more than one vote be cast with respect to any single lot. Persons or entities having an interest in any lot merely as security for the performance of an obligation are not owners.

5. This Declaration shall be effective in all respects including the creation of assessment obligations upon its recording, regardless of whether residences have been constructed on any lot and regardless of whether water is actually used for the benefit of any lot.

6. No individual or private wells or water systems shall be permitted or allowed on any lot or parcel which has been segregated from the original ownership described by Certificate of Survey No.

264, other than the water system governed by the Association. No lot owner shall furnish water to another person or entity except in cases of emergency and then only with the consent of the Association.

7. The cost of maintaining, repairing, replacing and operating the wells, pumping facilities and water transmission lines shall be prorated among the owners of each lot so that there shall be assessed to each lot an equal share of such costs provided, however, that the owners of each lot shall be fully liable and responsible for the construction, installation, maintenance and replacement of water lines and facilities from the exterior boundary of the lot to the point of use on the lot.

8. For the purpose of paying for direct operating expenses of the well and water systems such as electrical power, and for the payment of minor maintenance and repair amounting to less than \$ 100.00 per instance of repair, the Association shall collect from each member an annual payment of \$ 50.00 which shall be kept in an operating expense account by the treasurer of the Association. The amount of the periodic assessment shall be subject to change by vote of a majority of the members at a regular or duly called special meeting.

In addition to the periodic assessment, the members shall be subject to special assessments for major maintenance, replacement or reconstruction of facilities, the cost of which exceeds \$ 100.00 per incident. The manager and treasurer of the Association shall be authorized to obligate the Association for such reasonable and necessary expenses and repairs and the Treasurer shall in turn bill the members one-fifth of the expense to the owner of each lot.

If a member fails or neglects to pay the Association when due for period payments or special assessments within thirty (30) days after receipt of said bill, then the Association shall have the right to discontinue water service to the lot owner until such time as payment is made.

In addition to the remedy of discontinuance of water service, any such past due obligation shall be deemed a lien against the property to which it is assessed enforceable at law by action against

the owner personally or to foreclose the lien on the property in a like manner as provided by law for the foreclosure of mortgages. No owner may waive or otherwise escape liability for assessments provided herein by non-use of the water system or abandonment of the lot. The lien of assessment provided for herein shall, however, be subordinate to the lien of any first mortgage on the premises.

The remedies hereinabove provided shall be in addition to and not in lieu of any other remedies available at law and in the event that it is necessary for the Association to institute formal legal action to secure payment of the obligations due, then the Association shall be entitled to recover reasonable attorney's fees in addition to the past due obligation.

9. In the event of a dispute regarding the amount of water being used by any of the owners, or their successors in interest, or a dispute regarding the performance of any other terms and conditions of this Declaration, such dispute shall be resolved by a majority vote of the owners; and, if such dispute cannot be so resolved, then the issue or issues in dispute shall be submitted to an arbitration committee selected by the owners, the decision of which shall be binding upon all of the owners.

10. The owners shall elect a manager and treasurer for the Association of water users, and such officers shall be responsible to manage the operation of this water system, collect money from the parties hereto and pay the obligations of the Community Well Association. Such officers shall be elected at an annual meeting of the owners. The owners, at their option, may draw up Articles of Association, by-laws, or other rules to govern and control the operation of the water system. The Association shall exist until dissolved by a formal act of its members (there being only one vote per lot), during a meeting in which at least two-thirds (2/3) of the membership are present, in person, PROVIDED, HOWEVER, dissolution shall be accomplished only in the following cases:

(A) Where a Health Department approved entity shall replace the Association or, where the Montana State Department of Health and Environmental Sciences and the Sanders County Health Department advise in writing that the Association is no longer necessary.

(B) Where the applicable law and regulations of the federal, state, and local entities no longer require the Association or a replacement entity.

11. If within twenty-five (25) years after the date of this Declaration, the Declarant or its successor in interest shall develop into subdivision lots or segregated parcels other properties within

the Southwest Quarter (SW $\frac{1}{4}$) of Section 4, Township 21 North, Range 29 West, P.M.M., Sanders County, Montana, such additional developed lands may be annexed to the Association (and thereby added to its membership) at the request of the Declarant and without the necessity of the consent of the membership of the Association existing at the time of the request.

Before making such election, the Declarant or its successor in interest shall construct such additional facilities or improve or enlarge existing facilities at its expense and at no expense to the Association in a manner which complies with then existing standards of the Montana State Department of Health to insure the provision of adequate water to existing members of the Association as well as to the newly developed properties.

Upon such annexation, the owners of the annexed lots shall have all rights of membership in the Association and be subject to all obligations of membership in the Association to the same extent as then existing members of the Association.

12. The grant of interest in the well, the water, the pump and the pumping facilities and easements appurtenant thereto and the duties and obligations created in this Declaration shall be for the benefit of and appurtenant to the respective lots and parcels benefitted and the obligations and grants herein shall run with the land and be binding upon and inure to the benefit of the owners, their heirs, successors and assigns, forever.

13. So long as the Declarant shall retain any interest in the subdivision as an owner of any property contained therein or as the mortgagee or contract vendor of any such property the Declarant may cause to be formed a non-profit corporation known as the Ashley Creek Homeowners' Association, hereinafter called the "Corporation." In such event the developer may further elect that the Corporation shall assume the rights and responsibilities of the unincorporated Ashley Creek Water Users Association described above, and the Corporation shall then also assume ownership of the community well, the water obtained therefrom, the wellcasing, pump and pumping facilities now existing or hereinafter installed and the easements for the provision of water to individual lots. If lots have been sold or the unincorporated

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association otherwise set up at the time of the creation of the corporation, the purchasers of such lots shall be obligated to execute all documents necessary or convenient to accomplish such a transfer of ownership and responsibility to the homeowners' association.

The purpose of the Corporation with respect to the community water system shall be identical to the purposes stated in paragraph 3 above. The owners of lots in the subdivision shall be members of the Corporation and the Corporation shall have the power to enforce assessments in the same manner as the unincorporated association herein above provided for. The organization and operation of the Corporation may differ from the organization and operation of the unincorporated association insofar as is necessary to comply with Montana law governing the operation of Montana non-profit corporations and Federal Tax law setting forth requirements for the non-profit status of such corporations. The Declarant in the formation of the Corporation reserve entitlement to three votes for each lot in which it holds an interest required for membership as opposed to one vote for all other owners.

The Corporation so formed may serve additional purposes as set forth and any duly recorded declaration of covenants and conditions imposed on the subdivision, including but not limited to the acquisition, maintenance, operation and disposition of private roadways and parcels in the subdivision.

If the non-profit Corporation shall cease to exist for any reason before either of the conditions contained in sub-paragraphs A and B of paragraph 10 above shall have been met, then Ashley Creek Addition Water Users' Association shall continue to exist as a non-profit corporation in the manner set forth in the preceding paragraphs of this declaration.

IN WITNESS WHEREOF the Declarant has executed this Agreement on the year and date first above written.

BENNETT HOMES & ASSOCIATES

By: David S. Bennett, Its President

ATTEST:

David S. Bennett
Its Secretary

STATE OF MONTANA)
: ss.
County of Sanders)

On this 22nd day of April, 1981, before me, a
Notary Public for the above State, personally appeared DAVID S.
BENNETT, known to me to be the President of the Corporation that
executed the within instrument and acknowledged to me that such
corporation executed the same.



[Signature]
Notary Public - State of Montana
Residing at Thompson Falls, Mt.
My Commission expires 11-17-81

Filed for Record. 18 day of May, 1981 at 8:16
Book 1400 Page 337
By Klippe Vaughn Cox Deputy

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MEMORANDUM OF AGREEMENT

AGREEMENT MADE THIS 3rd day of ^{August} July, 1981, between
BENNETT HOMES AND REALTY, a Montana Corporation of Thompson Falls,
Montana, hereinafter called "BENNETT HOMES" and the Town of Thompson
Falls, Montana, hereinafter called the "TOWN".

WHEREAS BENNETT HOMES has contemporaneously herewith executed
a grant of easement over property described by Certificate of Survey
No. 262 as filed in the Office of the Clerk and Recorder of Sanders
County, Montana, for waterline construction purposes; and

WHEREAS as partial consideration of said grant of easement
the TOWN of Thompson Falls has agreed that on terms and conditions
hereafter set forth water will be made available from a waterline
constructed on the easement to property described by said Certificate
of Survey No. 262 : and

WHEREAS the parties desire to herein fully set forth the
terms and conditions of their agreements;

NOW THEREFORE, in consideration of the covenants hereinafter
contained it is agreed as follows:

1. The TOWN of Thompson Falls will make available to BENNETT
HOMES or its successors in interest to property described by Certificate of Survey No. 262 , Sanders County records, residential water
hookups at rates approved by the Public Service Commission of the
State of Montana when BENNETT HOMES or its successors in interest
shall have complied with the following conditions:

- a) Lots or homosites to be provided with water shall
have been created and approved in accordance with
the provisions of the Montana Subdivision and Platting
Act and the Montana Sanitation and Subdivisions Act
and regulations adopted in accordance therewith, as
such acts and regulations may be amended from time
to time.

homesites except for the main line for which the easement to the TOWN of Thompson Falls is granted.

c) The properties being supplied with water by the TOWN of Thompson Falls shall have been annexed into the Town of Thompson Falls or the owners thereof shall have entered into an irrevocable covenant in connection with the TOWN of Thompson Falls requiring their cooperation in the annexation process.

2. The parties agree that a determination by the Public Service Commission or any court of competent jurisdiction that any part of the foregoing agreement by the TOWN of Thompson Falls is unenforceable or contrary to law shall not affect the validity of the grant of waterline easement made by BENNETT HOMES as set forth hereinafter. Said easement being deemed irrevocable, unrescindable and supported by consideration other than contained herein including the benefit to the BENNETT HOMES property of the expansion of city water system capacity, the close proximity of city water line to the BENNETT HOMES property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the year and date set opposite their signatures and the effective date of this Agreement shall be the date on which the last party shall sign.

7-22-81
Date

BENNETT HOMES, by

David S. Bennett, President

ATTEST:

David S. Bennett
Secretary
8-3-81
Date

TOWN OF THOMPSON FALLS, by
David Haase
David Haase, Mayor

STATE OF MONTANA)
County of Sanders)

ss. Jeanne M. Robert

On this 22 day of July, 1981, before me, a Notary Public for the above State, personally appeared DAVIS S. BENNETT, known to me to be the President of the Corporation that executed the within instrument and acknowledged to me that such corporation

11 Aug 1981

STATE OF MONTANA)
County of Sanders) ss.

On this 3rd day of August, 1981, before me, a Notary Public for the above named State, personally appeared DAVID HAASE, known to me to be the person described in and who executed the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

[Signature]
Notary Public for State of Montana
Residing at Thompson Falls, MT
My Commission expires 11/17/81



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6. *[Signature]* 452