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DEBORAH L. PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

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(X)

Prepared by: Tom Jenk, P.O. Box 304, Dyersville, Iowa 52040-0304 (563)875-9112)

WELL WATER COVENANTS AND EASEMENT

2004-3378
2003-3613

RE: PARCEL 1: Lots Five (5) and Six (6) of Scenic Hill Terrace 3rd Addition in the SE¼ of the SW¼, Section 24, Township 89 North, Range 3 West of the 5th P.M., Delaware County, Iowa, according to plat recorded in Book 2003, Page 4876, subject to highway and easements of record

PARCEL 2: Lot Twelve (12) of Scenic Hill Terrace 2nd Addition Replat, Replat of Lots 1 through 12 of Scenic Hill Terrace 2nd Addition in the SE¼ of the SW¼, Section 24, T89N, R3W of the 5th P.M., Delaware County, Iowa, according to plat recorded in Book 2002, Page 3836, subject to highway and easements of record

THIS AGREEMENT is entered into between Dennis L. Wilgenbusch and Tammy A. Wilgenbusch, husband and wife, as joint tenants with full rights of survivorship, and not as tenants in common, Owners of Parcel 1, and Carl J. Wessels and Kathy M. Wessels, husband and wife, as joint tenants with full rights of survivorship and not as tenants in common, Owners of Parcel 2.

The undersigned owners of the following described real estate hereby make the following declarations imposing Well Water Covenants and Easements:

PARCEL 1: Lots Five (5) and Six (6) of Scenic Hill Terrace 3rd Addition in the SE¼ of the SW¼, Section 24, Township 89 North, Range 3 West of the 5th P.M., Delaware County, Iowa, according to plat recorded in Book 2003, Page 4876, subject to highway and easements of record

PARCEL 2: Lot Twelve (12) of Scenic Hill Terrace 2nd Addition Replat, Replat of Lots 1 through 12 of Scenic Hill Terrace 2nd Addition in the SE¼ of the SW¼, Section 24, T89N, R3W of the 5th P.M., Delaware County, Iowa, according to plat recorded in Book 2002, Page 3836, subject to highway and easements of record

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The undersigned hereby specify that said declaration shall constitute covenants to run with all of said lots as provided by law and shall be binding upon all parties and all persons claiming under them and for the benefit of all future owners of said lots.

1. On Parcel 1 there exists a water well, submersible pump, piping, well equipment and pressure tank.

2. The current owners and any successors, heirs and assigns of Parcel 2 shall have the right to the continued use of the well water system located on Parcel 1.

3. So long as Carl J. Wessels and Kathy M. Wessels remain the owners of Parcel 2, no monthly payment shall be required for their use of the ell located on Parcel 1.

4. This declaration also grants the owners of Parcel 2 the right of ingress and egress over Parcel 1 to repair, maintain, service, replace and remove water piping upon, over, along, under and across Parcel 1 in order to provide water from the well to Parcel 2. The owners of Parcel 2 shall be solely responsible for such repairs. Further, the owners of Parcel 2 shall restore Parcel 1 to the condition it was in prior to any disturbance of the land.

That the parties agree that the electrical cost to operate said well will be split evenly with the cost to be determined by the owner of Parcel 1. In the event an electrical meter and water meter is placed on the well, the parties agree the cost of the meter shall be split evenly and that the percentage of the cost of operation of said well will be based upon the meter readings of both the owner of Parcel 1 and Parcel 2 and that the electrical bill will be based on that same percentage.

5. The cost of maintenance, repair replacement, and electrical expense necessary to operate the well, pump, and pressure tank shall be shared between the owners of Parcel 1 and Parcel 2.

That the well is located 15 ' East and 25 ' South of the ---- corner of Parcel 1.

6. None of the undersigned owners of Parcel 1 or Parcel 2 guarantee the quality or quantity of the water from the well.

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7. The water supplied by the well to Parcel 2 shall be used solely for residential purposes only which said use is approved by the undersigned. This covenant is to supply water to one single family residential dwelling on Parcel 2.

8. That both parties have built homesteads on the respective lots and both parties have joined in the cost of said well including hookups to said well.

9. In the event of a casualty or disaster, including, but not limited to power failure or damage by lightening not within the reasonable control of either Owner of Parcel 1 or 2 which shall cause failure to the water supply, that both parties shall take all reasonable necessary steps to immediately restore and repair said service as soon as reasonably possible.

10. Nothing contained herein shall require the Owner of Parcel 2 to construct their own well or to obtain water from another source, and if it is their desire to construct their own well or to obtain water from another source they may do so without any liability to the owner of Parcel 1 upon giving written notification to the owner of Parcel 1 that the owners of Parcel 2 no longer want to use the pump or the water from the well. That this agreement shall then terminate.

11. That the use of the water shall be domestic use only and said parties consider normal use to be reasonable and necessary for the operation of the household as a residence which shall also include the sprinkling of the lawns, washing automobiles of the residents, and the watering of any pets, including riding horses of the residents, but shall not include the use of water for any commercial purpose.

12. That this written agreement shall be voided upon thirty (30) day notification by the owners of Parcel 2 to Parcel 1. Any cost for disconnection shall be paid by the owners of Parcel 2.

13. It is further agreed and understood that the rights herein shall be included with title of the land herein and shall pass to all future owners of said property and shall not be limited by any owner thereof to the detriment of the remaining owner.

14. That this Water Well Agreement shall also terminate without further action of any of the parties hereto at such a time as the City of Dyersville shall construct a water supply to said homes or immediately adjacent thereto which supply shall be available for the use of the property owners herein.

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15. That neither party makes any representations, express or implied in regards to the status of the well, state of repair, nor suitability for producing water fit for human consumption and further agrees if the well dries up or if there is some other unintentional disruption in service during the terms of this agreement that neither party shall be obligated to supply water to the other during the disruption of said service.

16. In the event it is necessary to replace the existing well for the reason of lack of sufficient water pressure, the well becomes dry, or if the quality of water becomes unfit for residential use, this agreement shall terminate at that time and the parties may then negotiate or renegotiate concerning the construction of a new shared well or individual wells.

17. The above stated rights, covenants and agreements contained herein shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of the parties.

18. That this agreement shall be recorded in the Delaware County Recorder's Office upon the signing of this agreement at the expense of both parties.

Dated at Dyersville, Iowa, this 15th day of March, 2004.

Dennis L. Wilgenbusch

Carl J. Wessels

Tammy A. Wilgenbusch

Kathy M. Wessels

STATE OF IOWA)
) ss:
COUNTY OF DUBUQUE)

On this 15th day of March, 2004, before the undersigned, a Notary Public in and for the State of Iowa, personally appeared Dennis L. Wilgenbusch and Tammy A. Wilgenbusch, husband and wife, to me personally known and who did by me being duly sworn on oath, did acknowledge the execution of this instrument to be their voluntary act and deed.

TOM JENK
Commission Number 203901
My Comm. Exp. SEP 15, 2006

Notary Public in and for the State of Iowa
Tom Jenk

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STATE OF IOWA)
) ss:
COUNTY OF DUBUQUE)

On this 15th day of March, 2004, before the undersigned, a Notary Public in and for the State of Iowa, personally appeared Carl J. Wessels and Kathy M. Wessels, husband and wife, to me personally known and who did by me being duly sworn on oath, did acknowledge the execution of this instrument to be their voluntary act and deed.

TOM JENK
Commission Number 203901
My Comm. Exp. SEP 15, 2006

Notary Public in and for the State of Iowa
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