Book 2010 Page 1713
Document 2010 1713 Type 06 006 Pages 5
Date 6/04/2010 Time 2:23:42PM
Rec Amt $29.00

DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

CSR

Prepared By and
Return To: Robert N. Downer, 122 South Linn Street, Iowa City, IA 52240, (319) 338-9222

WELL AGREEMENT

THIS WELL AGREEMENT is entered into this 20th day of May, 2010, by and between MARCHETA R. COOEY, unmarried, and MARCHETA R. COOEY and RALPH DOUGLAS COOEY, Co-Trustees of the Trust U/W/O Archie W. Cooey, Jr., Deceased (collectively "Grantors"), and Z & M HOLDINGS, L.L.C., an Iowa limited liability company ("Grantee").

RECITALS

WHEREAS, Grantors are the owners of the following described real estate situated in Delaware County, Iowa, to wit:

> Lot 1, Furman Subdivision, according to the plat thereof recorded in Plat Book 7, page 18, Plat Records of Delaware County, Iowa (the "Cooey Property"); and

WHEREAS, Grantee is the owner of the following described real estate situated in Delaware County, Iowa, to wit:

> Parcel U, Part Of The NW 1/4-NW 1/4 Sec. 30, T88N, R4W of the Fifth P.M., Delaware County, Iowa, according to plat recorded in Book 2004, Page 1752; and

That part of the Northwest fractional Quarter (NWfr1/4) of the Northwest Quarter (NW1/4) of Section Thirty (30), Township Eighty Eight (88) North, Range Four (4), West of the Fifth P.M. described as commencing at the Northwest corner of said Section Thirty (30) and running thence South 2° 15′ East one hundred forty one and one-tenth (141.1) feet, thence South 30° 11′ East three hundred two and one-tenth (302.1) feet, thence South 62° 07′ East one hundred seventy four and six-tenths (174.6) feet to the point of beginning, thence North 46° 62′ East ninety seven and five-tenths (97.5) feet, thence South 76° 49′ East three hundred forty four and one-tenth (344.1) feet, thence South two hundred six and six-tenths (206.6) feet, thence North 62° 07′ West four hundred fifty eight and nine-tenths (458.9) feet to the point of beginning, subject to easements and restrictions of record (the "Z & M Property") .

WHEREAS, the Cooey Property and the Z & M Property are adjacent and share a common well, which is located on the Cooey Property; and

WHEREAS, the parties desire to memorialize their agreement regarding the use, operation, repair and maintenance of this well.

NOW THEREFORE, in consideration of the mutual covenants, agreements, stipulations and conditions herein contained, it is agreed as follows:

1. Cooeys hereby grant to Z & M an easement over that portion of the Cooey Property where the waterline connecting the well on the Cooey Property to the Z & M Property is presently located, said easement being for the purpose of construction, operation, repair and maintenance of said existing water line up to the well. It is the intent of the parties that said easement shall run with the land for such period of time as the well referred to herein is in use and operation or until the parties otherwise mutually modify or terminate this Agreement in writing.

2. The costs and expenses of operating, maintaining, repairing and replacing the said well shall be shared equally by the parties.

3. Z & M shall be solely responsible for costs and expenses relating to the construction, operation, maintenance, repair and replacement of the water line and other equipment necessary for transporting water from the well to the Z & M Property. Z & M further agrees to re-sod any portion of the Cooeys' yard which may be dug up in the repair, replacement or maintenance of said water line.

4. Cooeys shall be solely responsible for all costs and expenses relating to the construction, operation, maintenance, repair and replacement of the water line and other equipment necessary for providing water to the Cooey property.

5. The parties agree that the water taken from the well shall be used for the operation of a marina on the Z & M Property in substantially the same manner and with water consumption substantially similar to that which has previously been made on the Z & M Property. No use making more intensive use of water on either of the properties shall occur without the prior written consent of the other party.

6. In case of a dispute arising between the parties concerning the operation, maintenance, repair and replacement of the well, either party may submit the same to arbitration. Each party shall be entitled to appoint one (1) nominee who shall then collectively meet and appoint a third arbitrator who shall be an attorney licensed to practice law in the State of Iowa. If a party refuses or fails to appoint a nominee within ten (10) days following a written request to do so by the other party, such nominee may be appointed by any judge of the Iowa District Court for Delaware County. The arbitrators, when duly appointed, shall hear evidence of the parties and other witnesses and do all things fully and completely to enable them to make a fair and full settlement of all matters in arbitration. When the arbitrators have passed upon matters in dispute between the parties, they shall notify each party in writing, of their decision, and their decision shall be final and binding upon the parties. The cost of arbitration shall be equally shared by the parties.

7. In consideration of Grantors allowing water to be withdrawn by Grantee without contribution to the cost of the original well, Grantee agrees to allow the residents of homes on six (6) adjacent residential lots to be able to utilize Grantee's dumpster for residential use, such lots being Lots 1, 2 and 3 (two houses), Furman's Subdivision and two (2) unplatted lots adjacent to the east lot line of the Z & M Property.

8. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, successors in interest, personal representatives, grantees and assigns.

DATED this 20 day of May, 2010.

MARCHETA R. COOEY, unmarried

MARCHETA R. COOEY

RALPH DOUGLAS COOEY

"Co-Trustees of the Trust U/W/O
Archie W. Cooey, Jr., Deceased"

"Grantors"

Z & M HOLDINGS, L.L.C.

By: _____

Title: _____

"Grantee"

STATE OF IOWA)
) ss:
COUNTY OF DELAWARE)

This instrument was acknowledged before me on the 20th day of May, 2010, by Marcheta R. Cooey, unmarried and as Co-Trustee of the Trust U/W/O Archie W. Cooey, Jr., Deceased.

MORGAN SCHMIDT
Commission Number 748842
My Commission Expires
9-11-10

Notary Public in and for the State of Iowa

STATE OF COLORADO)
) ss:
COUNTY OF Jefferson)

This instrument was acknowledged before me on 14th day of May, 2010, by Ralph Douglas Cooey, as Co-Trustee of the Trust U/W/O Archie W. Cooey, Jr., Deceased.

KATHY L. ELLIS
NOTARY PUBLIC
STATE OF COLORADO
MY COMMISSION EXPIRES 12/02/2013

Notary Public in and for the State of Colorado

STATE OF IOWA)
) ss:
COUNTY OF DELAWARE)

This instrument was acknowledged before me on the 20th day of May, 2010, by Chris Stender as Member / Manager of Z & M Holdings, L.L.C.

SCHMIDT
Number 748842
Expires

Notary Public in and for the State of Iowa

MORGAN SCHMIDT
Commission Number 748842
My Commission Expires
9-11-10