

K. 34216

EASEMENT AGREEMENT

THIS AGREEMENT made this 14 day of April, 1981, by and between LINDELL E. WARNEKING and GOLDIE S. WARNEKING, husband and wife, hereinafter called "Warneking" and FOTHERINGHAM BROS., a partnership, hereinafter called "Fotheringham".

R E C I T A L S:

A. Warneking is the owner of a parcel of real property situate in Klamath County, Oregon, to-wit:

PARCEL 1: A tract of land situated in the NW $\frac{1}{4}$ of Section 3, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the West line of said Section 3, said point being S. 00°47'55" W. a distance of 30.00 feet from the Northwest corner of said Section 3; thence S. 89°31'44" E. a distance of 446.23 feet to a 5/8 inch iron rod; thence S. 01°48'20" W. a distance of 2042.86 feet; thence N. 89°12'05" W. a distance of 410.32 feet to the West line of said Section 3; thence N. 00°47'55" E. a distance of 2040.00 feet along said West line to the point of beginning, containing 20.06 acres more or less.

PARCEL 2: The E $\frac{1}{2}$ of the NE $\frac{1}{4}$, and the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 4, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, containing 90 acres more or less.

B. Warneking is also the owner of a parcel of real property situate in Klamath County, Oregon, to-wit:

A tract of land situated in the NW $\frac{1}{4}$ of Section 3, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the West line of said Section 3, said point being S. 00°47'55" W. a distance of 2070.00 feet from the Northwest corner of said Section 3; thence S. 89°12'05" E. a distance of 410.32 feet; thence N. 01°48'20" E. a distance of 642.86 feet to a 5/8 inch iron rod; thence S. 88°44'25" E. a distance of 683.51 feet to a 5/8 inch iron rod at the beginning of a 63.66 foot radius curve concave to the North, the long chord of said curve bears S. 70°41'31" E. 71.10 feet; thence along the arc of said curve a distance of 75.43 feet to a point of tangency with the following course; thence N. 75°21'44" E. a distance of 143.71 feet; thence S. 78°31'46" E. a distance of 22.08 feet; thence S. 00°32'44" W. a distance of 1214.80 feet to the Southeast corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 3; thence N. 89°41'31" W. a distance of 1338.17 feet to the W $\frac{1}{2}$ of said Section 3; thence N. 00°47'55" E. a distance of 577.39 feet to the point of beginning, containing 31.0 acres, more or less.

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1. EASEMENT AGREEMENT

1 which property Warneking has agreed to sell to Fotheringham,
2 hereinafter called "The Fotheringham Property".

5 C. On or about September 18, 1979, Warneking conveyed a
6 parcel of adjacent property to Collin L. Pope and Glenda J. Pope
7 and entered into an Easement Agreement recorded September 19, 1979
8 in Volume M-79 page 22317, Deed Records of Klamath County, Oregon,
9 hereinafter called "The Pope Agreement" which created an irriga-
10 tion easement on The Pope Property for the benefit of the real pro-
11 perty described in this Agreement and a pump, motor and mainline
12 agreement for the ownership and maintenance of said equipment.

15 D. Warneking has conveyed to Fotheringham the following
16 interests in personal property:

25 31/166th interest in 75 h.p. Cornell pump with G. E.
26 motor #5K36VK264B1, electric panels, sump tank and
27 pump house

30 31/166th interest in 50 h.p. Century booster pump

31/166th interest in 3/8 mile of buried PVC 10" mainline

31/166th interest in 1/4 mile of buried PVC 8" mainline

31/166th interest in 1/8 mile of buried PVC 6" mainline
All 1,080' of 4" aluminum mainline.

35 E. In consideration of the sale of the above-mentioned real
36 property and an interest in the personal property, the parties here-
37 to desire to establish an easement for such irrigation system and
38 and to make an agreement as to the ownership rights and liabil-
39 ities of the personal property hereinabove mentioned.

40 NOW, THEREFORE, in consideration of the covenants herein con-
41 tained the parties agree as follows:

45 IRRIGATION EASEMENT

50 Warneking grants to Fotheringham a non-exclusive easement
51 for sprinkler irrigation purposes and the right to enter upon the
52 premises to operate, replace and repair the pumps, motors and main-
53 lines and appurtenances thereto, described as follows:

55 Thirty (30) feet in width along the Northerly boundary of
56 The Pope Property extending from the USBR "C" Canal West to the
57 West boundary of The Pope Property; thence sixteen (16) feet in
58 width along the Northerly boundary of Parcel I of the Warneking
59 Property; thence sixteen (16) feet in width along the Easterly boun-

60 2. EASEMENT AGREEMENT

dary of Parcel 2 of The Warneking Property extending from the most Northerly part thereof South to the 1/4 corner of Sections 3 and 4; said easement to be for the benefit of all of the property of Warneking and Fotheringham described in this Agreement.

PUMP, MOTOR AND MAINLINE AGREEMENT

1. Warneking has, by separate agreement, conveyed to Fotheringham, an interest in the personal property described in Paragraph D above, hereinafter called "The Equipment".

2. The parties agree to use The Equipment for irrigation purposes only.

3. The parties may sell, assign or convey their respective interest in The Equipment to other owners of the above-mentioned properties in ratio as their acreage bears to 166 acres.

4. Each of the parties hereto, or their successors in interest, agree to pay their fractional share of the maintenance, energy costs and replacement of The Equipment. Any interest or combination of interest that exceed 83/166ths may determine what maintenance or replacement is necessary and order the work to be done. All costs above mentioned shall be paid to the parties paying the energy costs or making the repair or replacement, within thirty (30) days of notice. In the event a party fails to pay such charges within thirty (30) days, he shall be responsible for twice the cost as liquidated damages and attorney's fees as awarded by the court.

5. No party to this Agreement shall in any way misuse or waste energy or water and shall do nothing that is destructive to The Equipment. In the event of destruction of The Equipment by any of the parties hereto, their agents or representatives, through negligence or misuse, said party shall be liable to forthwith repair or replace said equipment. In the event of their failure to repair or replace, they shall be liable to any other party who so repairs or replaces said equipment, together with any incidental costs and attorney fees in the event suit or action is instituted to collect the same.

3. EASEMENT AGREEMENT

6. Fotheringham, by acceptance of the conveyance of the real property above-mentioned, is bound by the terms of The Pope Agreement. Subsequent parties shall be bound by this Agreement by acceptance of a deed or other conveyance to the land mentioned in this Agreement.

WITNESS the hands and seals of the parties the day and year first hereinabove written.

Return to KCTC

Lindell E. Warneking
Lindell E. Warneking

Goldie S. Warneking
Goldie S. Warneking

FOTHERINGHAM BROS., a partnership

X By: Joe C. Fotheringham

X By: Walt W. Fotheringham

STATE OF OREGON)
County of Klamath) ss. 4-14, 1981.

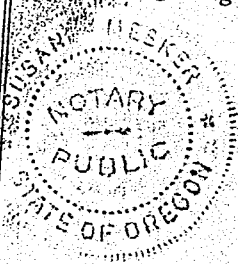
Personally appeared the above-named LINDELL E. WARNEKING and GOLDIE S. WARNEKING, husband and wife, and acknowledged the foregoing instrument to be their voluntary act. Before me:

[Signature]
Notary Public for Oregon
My Commission expires: 8-5-83

STATE OF OREGON)
County of Klamath) ss. April 13, 1981.

Personally appeared the above-named JOE C. FOTHERINGHAM, a partner, and WALT W. FOTHERINGHAM, a partner, and acknowledged the foregoing instrument to be their voluntary act. Before me:

Susan K. Meeker
Notary Public for Oregon
My Commission expires: 3-8-83



STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of _____
this 14th day of April A. D. 1981 at 3:25 o'clock PM,
duly recorded in Vol. M81, of Deed on Page 6694.

EVELYN BIEHN, County Clerk
By [Signature]
Fee \$14.00