

'98 JUL -7 A11:05

## AFTER RECORDING, RETURN TO:

William M. Ganong  
Attorney at Law  
514 Walnut Avenue  
Klamath Falls OR 97601

MTC 44443-KA

AGREEMENT FOR JOINT USE OF IRRIGATION WELL  
AND APPURTENANCES AND RECIPROCAL EASEMENTS

THIS AGREEMENT is made as of the 10th day of June 1998 by and between Agricultural Resources, an Oregon Limited Partnership, 24011 Jabil Lane, Los Altos Hills, California 94024, herein called "Agricultural Resources"; and Mike Russell and Donna Russell, husband and wife, 11010 Yonna Loop Road, Bonanza, Oregon 97623, herein called "the Russells."

## RECITALS:

1. The Russells are the owners of the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 36, Township 37 South, Range 11 $\frac{1}{2}$  EWM, Klamath County, Oregon. Agricultural Resources is the owner of the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , S $\frac{1}{2}$  NE $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$ , NW $\frac{1}{4}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  NW $\frac{1}{4}$  and NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 6, Township 38 South, Range 11 $\frac{1}{2}$  EWM, and the W $\frac{1}{2}$  E $\frac{1}{2}$  of Section 1, Township 38 South, Range 11 $\frac{1}{2}$  EWM, all in Klamath County, Oregon.
2. Agricultural Resources has agreed to sell to the Russells, and the Russells have agreed to purchase from Agricultural Resources 100 acres of land which are more particularly described on Exhibit "A" attached hereto.
3. There is located upon the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 36 an irrigation well which provides irrigation water to the land owned by the parties located in the E $\frac{1}{2}$  of Section 36 and the W $\frac{1}{2}$  of the E $\frac{1}{2}$  of said Section 1, and which is more particularly shown on Oregon Water Rights Certificate Nos. 29620 and G-5230. Attached hereto as Exhibit "B" is a map which shows the location of said well and the location of a buried line from the well to a distribution cistern from which the parties pump water for their independently maintained irrigation systems. Also shown on Exhibit "B" is the approximate location of a buried pipeline from the distribution cistern to a reservoir located on property owned by Agricultural Resources and the location of a buried drain line that empties into a pasture which is part of the land being sold by Agricultural Resources to the Russells. Each party maintains its separate pumping equipment at the cistern and separate mainline and other related irrigation facilities from the cistern to the property which each party now owns and the property which the Russells are purchasing from Agricultural Resources.
4. The parties desire to provide a perpetual Agreement for the operation, maintenance, and improvement of the shared portions of the irrigation system and perpetual easements for

access, operation, maintenance, and improvement of those portions of each party's independent irrigation and drainage systems which are located on the land of the other.

#### AGREEMENT:

The parties agree as follows:

1. Agricultural Resources does hereby give and grant to the Russells a perpetual right and easement for ingress and egress for the purpose of maintaining, repairing, and replacing the well located in the SE¼ NE¼ of said Section 36 and an easement for installing, maintaining, repairing, and replacing the mainline which connects the well to the distribution cistern, the route of which line is shown on Exhibit "B" attached hereto.
2. The Russells give and grant to Agricultural Resources a perpetual easement for that portion of the drain line shown on Exhibit "B" attached hereto, and that portion of the mainline which runs from the distribution cistern to the reservoir located in the SE¼ of said Section 36, which line is shown on Exhibit "B" attached hereto. Each said easement is for ingress and egress for the purpose of installing, maintaining, repairing, and replacing the existing lines and equipment and for installing such additional lines and equipment as may be reasonably necessary to fulfill the irrigation and drainage demands of Agricultural Resources.
3. Agricultural Resources does hereby give and grant to the Russells an easement for the lines from the distribution cistern to that portion of the real property currently owned by the Russells and the land currently owned by Agricultural Resources but which is being sold to the Russells. This easement is for the purpose of installing, maintaining, and replacing the pipes and equipment which provide irrigation water for the Russells' land and the land being sold by Agricultural Resources to the Russells.
4. It is mutually covenanted and agreed by the parties herein, on behalf of themselves and their respective heirs, grantees, and assigns as follows:
  - a. The Russells, their heirs, grantees, and assigns, shall be solely responsible for the operation, maintenance, repair, and replacement of the pipe lines, pumps, valves, and other equipment which provide irrigation water to Russells' land and the land being purchased by Russells from Agricultural Resources, and they shall repair at their sole expense any damage done to Agricultural Resources' land in such maintenance, repair, and replacement.
  - b. Agricultural Resources, its grantees and assigns, shall be solely responsible for the operation, maintenance, repair, and replacement of the pipe lines, drain lines, pumps, valves, and related equipment which provide irrigation water to Agricultural Resources' land and which drain Agricultural Resources' land and shall repair at its sole expense any damage to Russells' land in such maintenance, repair, and replacement.

c. The Russells shall pay 15 percent and Agricultural Resources shall pay 85 percent of all costs of operation, maintenance, repair, replacement, and improvement of the well, the casing, the pump at the well, the distribution cistern, and the pipe line from the well to the distribution cistern, and any other portions of the irrigation system which benefit the land of both parties and any damage caused to the land and crops from such maintenance, repair, or replacement. In the event of any such repair or replacement of the well, the casing, or other shared facilities, the parties expressly agree to cooperate fully in allowing said repair or replacement to be made just as soon as reasonably possible, and the parties further agree to pay for or arrange for the payment of their respective shares of the costs of repair or replacement as soon as is reasonably possible.

d. In the event there is an insufficient supply of water from the well to irrigate both Russells' and Agricultural Resources' land simultaneously, or in the event that due to frost, wind, or other weather conditions it is necessary for Agricultural Resources to use more than its proportional share of said water, then Agricultural Resources' use of the water from the well shall have priority over the Russells' use of the water from the well, and the Russells shall, immediately upon request from Agricultural Resources, terminate their use of the water until such time as Agricultural Resources' immediate need has been satisfied. Agricultural Resources agrees to use all reasonable means to satisfy its irrigation demands without waste or delay and to allow Russells to irrigate their pasture lands so as not to damage or injure the grass or other crops growing on the Russells' property.

e. In the event that either party fails to promptly pay its proportionate cost of the shared irrigation system, including its proportional cost of the electricity required to operate the well pump, then such party's right to use the shared irrigation system and water from the well shall cease until such time as said party's share of the cost has been paid in full. Time and full performance are of the essence of this Agreement.

f. In the event that either party shall at any time hereafter institute any suit, action, or proceeding to enforce any of the covenants or agreements herein contained and/or for damages for the breach of the same, then the prevailing party in such suit, action, or proceeding shall be entitled to an award and judgment against the other party for the prevailing party's reasonable attorney's fees incurred therein, including attorney's fees incurred in any appeal from such suit, action, or proceeding.

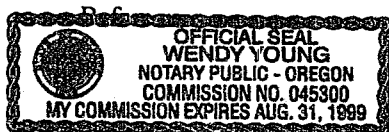
g. This Agreement shall bind and inure to the benefit of the parties and of the land herein above described and shall be appurtenant thereto and run therewith. This Agreement shall survive the sale by Agricultural Resources to the Russells of the 100 acres described above, and the Deed from Agricultural Resources to the Russells in that transaction shall not be deemed or interpreted to be a waiver or release of any rights which Agricultural Resources has under the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and

AGRICULTURAL RESOURCES, INC.

By: Robert D. MuneMike Russell  
Mike RussellDonna Russell  
Donna RussellSTATE OF Oregon, County of Klamath ss.

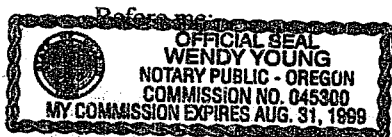
Personally appeared Robert D. Mune to me known and known to be the person described in and who executed the foregoing instrument as general partner of Agricultural Resources, an Oregon Limited Partnership, and acknowledged before me that he executed the same as such officer, in the name of and for and on behalf of said partnership.



Wendy Young  
Notary Public for Oregon  
My Commission Expires: 8-31-99

STATE OF OREGON, County of Klamath) ss.

Personally appeared the above-named Mike Russell and Donna Russell and acknowledged the foregoing instrument to be their voluntary act and deed.



Wendy Young  
Notary Public for Oregon  
My Commission Expires: 8-31-99

**TRU SURVEYING, INC. LINE**

TELEPHONE (541) 884-3691  
2333 SUMMERS LANE • KLAMATH FALLS, OREGON 97603

JANUARY 16, 1998  
LEGAL DESCRIPTION FOR  
PROPERTY LINE ADJUSTMENT 38-97

A TRACT OF LAND BEING A PORTION OF PARCEL 2 OF "MINOR LAND PARTITION 15-90", SITUATED IN THE W1/2 E1/2 AND THE NE1/4 NW1/4 OF SECTION 36, T37S, R11 1/2EWM, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH 1/4 CORNER OF SAID SECTION 36; THENCE N89°05'03"E 1323.78 FEET TO THE E 1/16 CORNER COMMON TO SECTIONS 25 AND 36 AND THE WEST LINE OF THAT TRACT OF LAND OWNED BY MIKE AND DONNA RUSSELL; THENCE S00°21'57"W, ALONG THE SAID TRACT OF LAND, 1320.15 FEET TO A FENCE CORNER; THENCE THE FOLLOWING COURSES AND DISTANCES GENERALLY ALONG AN EXISTING FENCE LINE; S88°49'15"W 114.29 FEET, S00°14'09"E 1318.34 FEET, S00°05'02"E 962.47 FEET AND S89°25'11"W 1132.76 FEET; THENCE S89°25'11"W, TO A POINT ON THE CENTER LINE OF SQUAW FLAT ROAD AND ON THE WEST BOUNDARY LINE OF SAID PARCEL 2, 26.9 FEET MORE OR LESS; THENCE THE FOLLOWING COURSES AND DISTANCES ALONG SAID BOUNDARY; N00°10'06"W 2732.58 FEET, ALONG THE ARC OF A CURVE TO THE LEFT (RADIUS EQUALS 1909.86 FEET AND CENTRAL ANGLE EQUALS 05°00'00") 166.67 FEET, N05°10'06"W 546.22 FEET AND ALONG THE ARC OF A CURVE TO THE LEFT (RADIUS EQUALS 954.93 FEET AND CENTRAL ANGLE EQUALS 09°09'08") 152.54 FEET, N89°05'03"W 42.65 FEET TO THE POINT OF BEGINNING, CONTAINING 100.1 ACRES, WITH BEARINGS BASED ON "MINOR LAND PARTITION 15-90".

SUBJECT TO: A 20 FOOT WIDE IRRIGATION EASEMENT, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF THE ABOVE DESCRIBED TRACT OF LAND, FROM WHICH THE SOUTHEAST CORNER OF SAID TRACT OF LAND BEARS N89°25'11"E 587.87 FEET; THENCE N31°11'49"E 1132.14 FEET TO A POINT ON THE EAST BOUNDARY LINE OF THE SAID TRACT OF LAND.

SUBJECT TO: AN EASEMENT FOR AGRICULTURAL RESOURCES TO USE EXISTING DRAINAGE FACILITIES AS SHOWN ON EXHIBIT A OF THIS DESCRIPTION.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 25, 1990  
DENNIS A. ENSOR  
2442

*Dennis A. Ensor*  
DENNIS A. ENSOR O.L.S. 2442

EXPIRES 12/31/99

*DA*

23856

L = 152.54  
Δ = 09°09'08"  
R = 954.93  
LC = N09°44'40"W  
152.38

L = 166.67  
Δ = 05°00'00"  
R = 1909.86  
LC = N02°40'06"W  
166.61

S88°49'15"W  
114.29 -

100.1 Ac.2

DRAIN JUNCTION  
BOX

20 FOOT WIDE  
IRRIGATION EASEMENT

N31°11'49"E  
1132.14

This sketch is furnished for information purposes only to assist in property location with reference to streets and other parcels. No representation is made as to accuracy and the Company assumes no liability for any loss occurring by reason of reliance thereon.

AMERITITLE OF KLAMATH FAILS

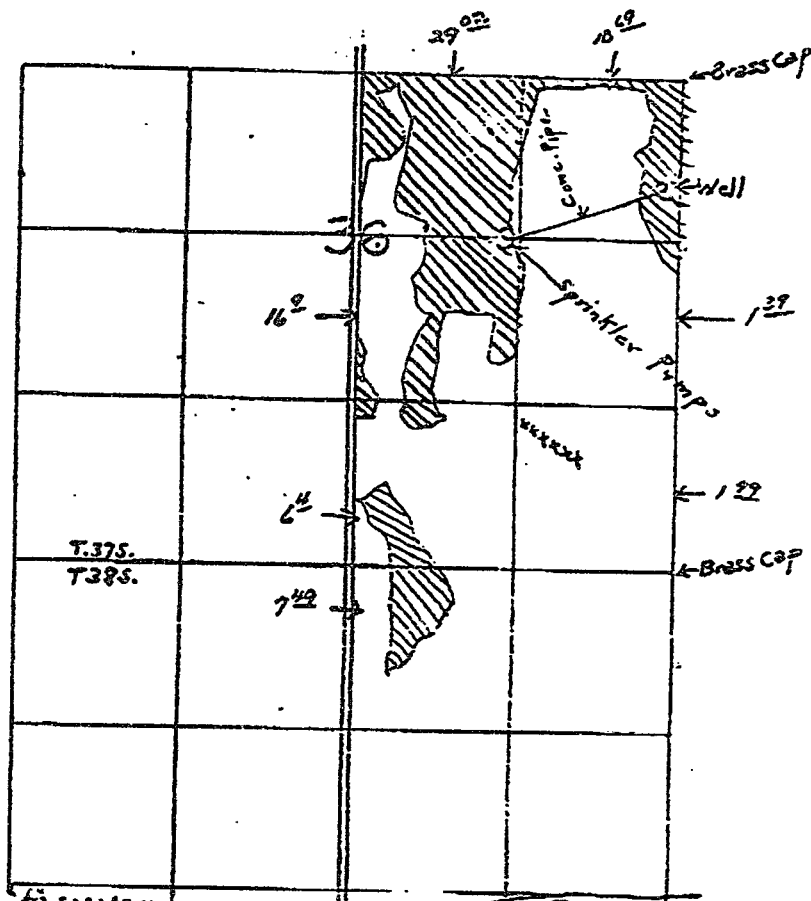
500'05  
PARCEL 2 OF  
LAND PARTITION 15-90

EXHIBIT

PAGE 1 OF 1

23857

Suck Creek: Gonna Valley  
wades



Application No. G-5344  
Permit No. G-5230

Total acres to be added  $\rightarrow 73.93$

DONALD E. VIRGINIA H. SCHREINER

Amerititle  
on this 7th day of July A.D., 1998  
at 11:05 o'clock A.M. and duly recorded  
in Vol. M98 of Deeds Page 23851

By Kathleen Koss  
Fee. \$60.00 Deputy.

EXHIBIT

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