

RELEASE OF EASEMENT,
GRANT OF EASEMENT,
GRANT FOR FUTURE USE OF ROADWAY AND
AGREEMENT TO EXTEND UTILITIES

Dated: 9-23, 1999.

Parties: Donald B. Trunnell and Esther M. Trunnell, Co-Trustees, or their named successor trustees, of that certain revocable trust agreement executed June 4, 1996 by Donald B. Trunnell and Esther M. Trunnell for the benefit of the Trunnell Family, ("Trunnell")

and

Jeannie L. Fuller ("Fuller")

Recitals

A. Trunnell is the owner of a parcel of real property situated in Klamath County, Oregon described as follows:

Parcel 3 of Land Partition 11-92 situated in the SW $\frac{1}{4}$ of Section 6, and the NE $\frac{1}{4}$ of Section 7, all in Township 39 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, filed in the office of the County Clerk on July 9, 1993, records of Klamath County, Oregon.

Also, Commencing at the West 1/16 corner common to Section 6 and 7, Township 39 South, Range 10 East of the Willamette Meridian; thence N00°07'00"E 259.45 feet to a 5/8" iron pin; thence N49°37'00"E 627.09 feet to a 5/8" iron pin; thence N58°09'25"E 171.49 feet; thence N28°30'00"E 84.29 feet to the point of beginning of this description; thence N61°30'00"W 80.00 feet; thence N28°30'00"E 25.71 feet; thence S61°30'00"E 80.00 feet; thence S28°30'00"W 25.71 feet to the point of beginning.

SAVING AND EXCEPTING, the following: Commencing at the West 1/16 corner common to Section 6 and 7, Township 39 South, Range 10 East of the Willamette Meridian; thence N00°07'00"E 259.45 feet to a 5/8" iron pin; thence

N49°37'00"E 627.09 feet to a 5/8" iron pin; thence N58°09'25"E 171.49 feet to the point of beginning for this description; thence N61°30'00"W 80 feet; thence N28°30'00"E 84.29 feet; thence N61°30'00"W 58.38 feet; thence S28°30'00"W 160.00 feet; thence S61°30'00"E 176.00 feet; thence N28°30'00"E 160.00 feet; thence N61°30'00"E 37.62 feet; thence S28°30'00"W 84.29 feet to the point of beginning.

hereinafter called the "Trunnell Property".

B. Trunnell desires to develop the Trunnell Property and to construct the Hilyard Tank Access Road as designed by the City of Klamath Falls from Hilyard Avenue north to the water tanks owned by the City of Klamath Falls, hereinafter called the "Hilyard Tank Access Road".

C. Fuller is the fee owner of a parcel of real property situated in Klamath County, Oregon, described as follows:

A piece or parcel of land located in Lot 7 of Section 6, Township 39 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Commencing at the section corner at the Southwesterly corner of said Section 6 and running thence North 89°48' East along the section line marking the southerly boundary of the said Section 6, 939.5 feet; thence North 0°27' West and parallel with the Section line marking the Westerly boundary of the said Section 6, 424.6 feet to the true point of beginning of this description; thence North 89°48' East, 200.00 feet; thence South 0°27' East, 165.0 feet, more or less, to the right of way line of the High Ditch of the Enterprise Irrigation District, which is a line twenty feet distant Northeasterly from the center line of said ditch as the same is now located and constructed; thence following said right of way line Northwesterly to a point from which the said point of beginning bears North 0°27' West; thence North 0°27' West 42.9 feet, more or less, to said point of beginning.

hereinafter called the "Fuller Property".

D. The Fuller Property is benefitted by the rights created by that certain easement for ingress and egress, as evidenced by deed dated August 27, 1952, and recorded August 27, 1952, in Volume 256 at page 400, Deed Records of Klamath County, Oregon, wherein George

M. Wheeler and Estella S. Wheeler were grantors and Melvin L. Hayes and Jean W. Hayes were grantees, hereinafter called the "Fuller Easement". A portion of the Fuller Easement encroaches upon the Trunnell Property. The use of the Fuller Easement was dependent upon a bridge across the High Line Ditch of the Enterprise Irrigation District. The bridge across the High Line Ditch has been destroyed and the easement is no longer usable.

E. Fuller gains access for ingress and egress to the Fuller Property on a dirt road extending from Hilyard Avenue north across the Trunnell Property to the most Southeasterly corner of the Fuller Property. Fuller has connected her sanitary sewer lines to the South Suburban Sanitary District main sewer line on Hilyard Avenue across the Trunnell Property to the most Southeasterly corner of the Fuller Property.

F. The parties desire to resolve the various property rights for their mutual benefit through this Agreement as follows:

Agreement

1. **Release of Fuller Easement.** Fuller by execution of this Agreement releases and quit claims the portion of the Fuller Easement that encroaches upon the Trunnell Property to Trunnell.

2. **Grant of Easement for Ingress and Egress.** Trunnell grants to Fuller, her successors or assigns, as their interests may appear an easement for the continued use of the roadway and the sewer line that encroach upon the Trunnell Property until such time as the Hilyard Tank Access Road, or other similar roadway, is constructed by Trunnell, their successors or assigns, or any governmental agency. Upon completion of the Hilyard Tank Access Road or other similar roadway, Fuller, her successors and assigns, hereby agree and are bound to release this easement for ingress and egress. The parties agree that the failure of Fuller, her successors and assigns, to release this easement upon completion of the Hilyard Tank Access Road or other similar roadway would necessitate a breach of contract action which could substantially impair the development by Trunnell or their successors and assigns. Fuller hereby recognizes the substantial damages which would be incurred due to the delay caused by the necessity of a breach of contract action.

3. **Use of Future Roadway and Extension of Utilities.** Upon construction of the Hilyard Tank Access Road or other similar roadway, Trunnell or their successors or assigns will provide access to the Hilyard Tank Access Road to Fuller either by public roadway right of way or by easement to allow Fuller unencumbered access to her property. Trunnell, their successors and assigns,

will also extend the utilities from the Hilyard Tank Access Road to the boundary of the Fuller Property at a location designated by Trunnell. Such extension of utilities shall be at no expense to Fuller.

4. Floating Easements. The access easements referenced in paragraphs 2 and 3 above shall be "floating easements." Trunnell, their successors and assigns, shall have the right to change location of either the Hilyard Tank Access Road or the Fuller current access road so long as the newly created roadways are in substantially the same condition and provide Fuller full and complete access to her property. The expense of moving of any of the easements shall be borne by Trunnell.

5. Temporary License. Fuller currently utilizes a portion of the Trunnell property lying immediately west of the Fuller home, north of the Enterprises Irrigation ditch to the present north/south fence line for pasture, a chicken coop and a garden. Trunnell does hereby grant Fuller a license to continue the use of the property until such time as Fuller sells her property or 36 months, whichever is earlier. Fuller shall maintain the property in a husbandlike manner and shall not create a nuisance due to her use of the property.

6. Miscellaneous Provisions

6.1. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors, and assigns.

6.2. Attorney Fees. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

6.3. Amendments. This Agreement may be amended only by an instrument in writing executed by all the parties.

6.4. Further Assurances. From time to time, each of the parties shall execute, acknowledge, and deliver any instruments or documents necessary to carry out the purposes of this Agreement.

6.5 Governing Law. This Agreement shall be governed by

and construed in accordance with the laws of the state of Oregon.

Donald B. Trunnell

Donald B. Trunnell, Co-Trustee of
the Revocable Trust Agreement
executed June 4, 1996

Esther M. Trunnell

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the Revocable Trust Agreement
executed June 4, 1996

Jeannie L. Fuller

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Donald B. Trunnell

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Jeannie L. Fuller

Jeannie L. Fuller

State of Oregon, County of Klamath
Recorded 10/20/00, at 4:24 p m.
In Vol. M00 Page 38473
Linda Smith,
County Clerk Fee\$ 46⁰⁰