

03 NOV 25 AM 11:25

AFTER RECORDING, RETURN TO:

Eldwin H. Sorensen
Rebecca S. Ruddell-Sorensen
8620 Booth Road
Klamath Falls OR 97603

State of Oregon, County of Klamath
Recorded 11/25/03 11:25 a m
Vol M03 Pg 86626-32
Linda Smith, County Clerk
Fee \$ 51.00 # of Pgs 7

285235

GRANT OF EASEMENT AND JOINT USE AGREEMENT

This Agreement is made and entered into on this 21st day November, 2003, by and between Eldwin H. Sorensen and Rebecca S. Ruddell-Sorensen, Trustees of the Eldwin H. Sorensen Revocable Trust, uda 9/1/1995, herein referred to as "Grantors," and Shane Mitchell and Kaci Mitchell, herein referred to as "Grantees."

RECITALS:

A. Grantors own certain real property in Klamath County, Oregon consisting of approximately 21.43 acres, which is more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference. Grantees purchased from Grantors the adjoining land consisting of approximately 4.1 acres, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

B. The land of the Grantors and the Grantees is benefitted by an Agreement for Easement recorded in Volume M83 at Page 18141 of the records of Klamath County, Oregon. Said Easement grants to the lands of Grantors and Grantees the right to access, operation, maintenance, repair, and replacement of a pump station on the right-of-way of the Pine Grove Irrigation District and a buried mainline from said pump station to Grantors' land, as more particularly shown on Exhibit "C" attached hereto and incorporated herein by this reference.

By this Grant of Easement and Joint Use Agreement, the parties desire to provide for the joint use of the rights arising under said existing Easement and for the grant by Grantors to Grantees of an easement across Grantors' land for a buried mainline from the existing buried mainline to Grantees' land. Therefore, the parties agree as follows:

AGREEMENT

1. Grantors do hereby grant and convey to Grantees an easement across Grantors' land for a buried irrigation pipeline to be installed at Grantees' expense for the sole purpose of supplying irrigation water to Grantees' land. Said easement shall be 15 feet wide, the center line of which will be the center line of the buried irrigation pipeline when installed by Grantees. Said pipeline shall be installed by Grantees within three years of the date of this Agreement and shall be located not further than 25 feet from the westerly bank of the existing drain ditch located near the easterly boundary of Grantors' land, as shown on Exhibit "C." Said easement shall begin at

KSI. E

the point where an existing buried mainline enters Grantors' east boundary and connects to Grantors' surface mainline.

2. Grantees shall install, at Grantees' sole expense, appropriate control valves and connectors, which shall allow for the individual irrigation of the Grantees' and Grantors' land. Said pipeline shall be installed not less than 30 inches below the surface of the ground, so as not to interfere with the normal use of Grantors' property. The pipeline installed by Grantees shall also have a shutoff valve at the point where the pipeline leaves Grantors' land and enters Grantees' land. Grantors reserve the right to access to said shutoff valve for appropriate operation of the system.

3. Grantees and Grantors agree to pay a prorated share of the expense for the repair, maintenance, and operation of the pump, motor and related facilities and for that portion of the mainline from the Pine Grove Irrigation District to Grantors' easterly boundary. The utility expense shall be prorated annually, based on the actual number of acres each party irrigated during that particular year. The repair, maintenance, and replacement costs will be prorated based on the average number of acres each party irrigated during the prior five years, rounded to the nearest 1/10 of an acre. Payment of each party's share of the expense shall be due and payable after presentation of proof of payment of the expense by the other party.

4. Grantees shall use the easement premises only for the purpose of constructing, maintaining, repairing, removing, and operating the buried pipeline. Grantees shall have the sole and exclusive responsibility for the maintenance, repair, removal, and operation of the mainline located on the easement located on Grantors' property, and Grantors shall have no obligation to Grantees other than those obligations specifically set forth herein. Grantees shall expeditiously repair any damage to the surface of the easement strip and the remainder of Grantors' property resulting from the construction, maintenance, repair, replacement, inspection, removal, or operation of the mainline. Grantees shall return the easement area to its original grade and to its condition prior to the commencement of the work. Grantees shall use due care to avoid damage to that portion of Grantors' land that is not encumbered by this easement.

5. Grantors reserve the right to use the surface of the easement area and the remainder of their property for any and all purposes that do not unreasonably interfere with the exercise by Grantees of their rights under this Agreement.

6. Grantees shall have the right, to the extent reasonably necessary, of access to the easement premises.

7. Grantees agree to indemnify and defend Grantors from any liability to any third party that arises in any manner out of the exercise by Grantees of their rights under this easement or out of the existence of the buried mainline. Grantees shall have no claim against Grantors for any damage to the mainline from any cause other than Grantors' negligent conduct and, in any event, Grantees shall have no claim against Grantors for any consequential damages. Grantees shall be responsible for any damage or loss to Grantors' real or personal property, including crops, arising out of or in any way connected with Grantees' construction, maintenance, repair, removal, and

operation of the mainline, including but not limited to any damage or loss arising out of the breakage or malfunction of Grantees' mainline.

8. Grantees accept the easement premises "as is." Grantors make no warranty or guarantee of water quality or quantity or of the stability or condition of any portion of the easement and shall not be responsible for any condition or changes resulting from normal farming activities on the adjoining land.

9. Unless terminated as provided by law, this easement shall be perpetual.

10. This easement and all rights and privileges granted hereunder shall automatically terminate upon the occurrence of any of the following events:

(a) Grantees' failure to complete construction of the mainline on the easement within three years of the date hereof;

(b) Grantees' discontinuance for a period of seven continuous years of the use of the water provided by the mainline; or

(c) Grantees' failure to perform any of Grantees' obligations under this easement within 30 days after written notice from Grantors specifying the obligation the Grantees have failed to perform.

11. If this easement is automatically terminated for any of the reasons specified in paragraph 10, above, Grantors may record an affidavit in the public records of Klamath County, Oregon specifying that this easement and all of Grantees' rights and privileges granted hereunder have been terminated, which shall be conclusive proof of termination as against Grantees, their successors, and assigns.

12. Upon any termination of this easement, Grantees shall have the right to remove and take away from Grantors' property any of Grantees' machinery, equipment, or fixtures, at Grantees' sole expense. Provided, however, Grantees shall not alter or remove any machinery, equipment, or fixtures that are reasonably necessary for Grantors' continued use of Grantors' irrigation system and that portion of the shared mainline from the Pine Grove Irrigation District canal. Such removal shall be accomplished within 60 days after such termination. Grantees shall repair all damages to Grantors' property caused by the removal and restore the property to the condition it was in prior to Grantees' removal of the improvements. Grantors shall be entitled to retain ownership of any fixtures remaining on the property and shall be entitled to retain any water right appurtenant to the property, if Grantees do not transfer said water right to another location.

13. This Grant of Easement and Joint Use Agreement shall be binding upon the parties, their successors, and assigns, and shall run with the land.

14. In the event of any suit or action to enforce this Grant of Easement and Joint Use

Agreement, the prevailing party shall be entitled to, in addition to statutory costs and disbursements, reasonable attorney's fees and expert witness fees to be fixed by trial and appellate courts from the time such action is filed.

15. This document is the entire, final, and complete agreement of the parties and supercedes and replaces all prior or existing written or oral agreements, or both, between the parties and their representatives relating to the property.

16. If Grantees, at their own discretion, decide to develop a pumping station from the existing drain ditch on Grantees' property, Grantees agree to allow adequate drinking water to continue flowing downstream at all times for all livestock on Grantors' property.

Dated and executed as of the date first herein written.

GRANTORS:

Eldwin H. Sorensen Tr
Eldwin H. Sorensen, Trustee of the
Eldwin H. Sorensen Revocable Trust

Rebecca S. Ruddell-Sorensen Trustee
Rebecca S. Ruddell-Sorensen, Trustee of
the Eldwin H. Sorensen Revocable Trust

GRANTEES:

Shane L Mitchell
Shane Mitchell

Kaci Mitchell
Kaci Mitchell

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on November 21, 2003 by Eldwin H. Sorensen, as Trustee of the Eldwin H. Sorensen Revocable Trust.

Stacy Collins
Notary Public for Oregon
My Commission Expires: 8-2-07



STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on November 05, 2003 by Rebecca S. Ruddell-Sorensen, as Trustee of the Eldwin H. Sorensen Revocable Trust.

[Signature]
Notary Public for Oregon
My Commission Expires: 8-2007

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on Nov. 21, 2003, 2003 by Shane Mitchell.

[Signature]
Notary Public for Oregon
My Commission Expires: 8-2007

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on Nov. 21, 2003, 2003 by Kaci Mitchell.

[Signature]
Notary Public for Oregon
My Commission Expires: 8-2007

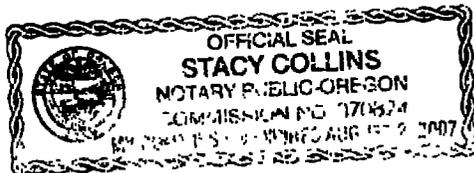


Exhibit "A"

Real property in the County of Klamath, State of Oregon, described as follows:

A tract of land situated in the E 1/2 SE 1/4 of Section 7, T. 39 S., R. 10 E. W. M., Klamath County, Oregon, being a portion of that tract of land described in Deed Volume M84 page 20814 of the Klamath County Deed Records, being more particularly described as follows:

Beginning at a point on the Northerly line of said Deed Volume M84 page 20814, from which the C-E 1/16 corner of said Section 7 bears N. 89°49'13" W. 34.50 feet; thence along the boundary of said Deed Volume M84 page 20814, S. 89°49'13" E. 340.95 feet, along the arc of a curve to the right (radius = 259.41 feet, and central angle = 90°33'15") 409.99 feet, to a point 15 feet Easterly of an existing drain and S. 00°44'02" W. paralleling said drain, 130.08 feet; thence N. 89°49'13" W. 596.26 feet; thence N. 00°14'02" W. 392.00 feet to the point of beginning, with bearing based on the recorded survey of Major Land Partition No. 85-83.

Together with: ingress and egress easement as recorded in Deed Volumes M84 page 20818 and M84 page 20820 of the Klamath County Deed Records.

SAVE AND EXCEPTING therefrom the following described property:

That property described in Property Line Adjustment 5-02. A tract of land being a portion of Parcel 1 of "Major Land Partition No. 85-83", situated in the E 1/2 SE 1/4 of Section 7, T. 39 S., R. 10 E. W. M., Klamath County, Oregon to be combined with Parcel 2 and excluded from Parcel 1, being more particularly described as follows:

Beginning at the Southwest corner of Parcel 1 of said Land Partition; thence along the West line of Parcel 1, N. 00°14'02" W. 70.00 feet; thence S. 89°49'13" E. 597.44 feet to a point on the East line of said Parcel 1; thence S. 00°44'02" W. along the East line of said Parcel 1, 70.00 feet to the Southeast corner of said Parcel 1; thence N. 89°49'13" W. 596.26 feet to the point of beginning, containing 41,777 square feet; more or less, with the bearings based on plat of said Land Partition on file at the office of the Klamath County Surveyor.

Exhibit "B"

Real property in the County of Klamath, State of Oregon, described as follows:

A tract of land situated in the E 1/2 SE 1/4 Section 7, Township 39 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, being a portion of that tract of land described in Deed Volume M84 page 20814, Deed records of Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the Northerly line of said Deed Volume M84 page 20814, from which the C-E 1/16 corner of said Section 7 bears North 89°49'13" West 4.50 feet; thence Southerly 1824.95 feet (along an existing fence line which is the property line by agreement recorded in Deed Volume M84 page 7916 thru 7918 of the Deed records of Klamath County, Oregon) to the centerline of an existing drain ditch; thence along the centerline of said drain ditch the following courses and distances; North 63°44'26" East 595.56 feet, North 68°19'02" East 135.92 feet, North 65°31'30" East 53.94 feet, North 45°27'21" East 63.93 feet, North 09°20'02" East 62.44 feet, North 00°05'07" East 142.70 feet, North 07°23'48" East 128.22 feet; thence South 79°47'46" East 15.00 feet; thence Northerly 15.00 feet Easterly of said parallel with said ditch the following courses and distances; along the arc of a curve to the left (radius point bears North 79°47'46" West 135.00 feet and central angle = 64°29'22") 151.95 feet, North 54°17'08" West 70.42 feet, along the arc of a curve to the right (radius = 135.00 feet and central angle = 33°10'29") 78.10 feet, North 21°06'39" West 31.90 feet along the arc of a curve to the right (radius = 155.00 feet and central angle = 21°50'41") 59.10 feet, North 00°44'02" East 398.11 feet; thence North 89°49'13" West 596.26 feet; thence North 00°14'02" West 392.00 feet; thence North 89°49'13" West 30.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion within Vale Road and/or Booth Road, bearings based on survey of Major Land Partition 85-83.

TOGETHER WITH: ingress and egress easement as recorded in Deed Volume M84 page 20815, and Volume M84 page 20820 Deed records of Klamath County, Oregon

ALSO an ingress and egress easement more particularly described as follows: Beginning at a point South 89°49'13" East 34.50 feet from the said C-E 1/16 corner; thence continuing South 89°49'13" East 60.00 feet; thence South 00°14'02" East 90.00 feet; thence North 89°49'13" West 60.00 feet; thence North 00°14'02" West 90.00 feet to the point of beginning.

EXCEPTING THEREFROM the following:

A tract of land being a portion of Parcel 1 of "Major Land Partition No. 85-83", situated in the E 1/2 SE 1/4 of Section 7, Township 39 South, Range 10 E. W.M., Klamath County, Oregon to be combined with Parcel 2 and excluded from Parcel 1, being more particularly described as follows:

Beginning at the Southwest corner of Parcel 1 of said Land Partition; thence along the West line of Parcel 1, N. 00°14'02" W. 70.00 feet; thence S. 89°49'13" E. 597.44 feet to a point on the East line of said Parcel 1; thence S. 00°44'02" W. along the East line of said Parcel 1, 70.00 feet to the Southeast corner of said Parcel 1; thence N. 89°49'13" W. 596.26 feet to the point of beginning, with bearings based on the plat of said land partition on file at the office of the Klamath County