

2006-023937

Klamath County, Oregon



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12/01/2006 11:10:26 AM

Fee: \$56.00

**COVER SHEET**

**ORS: 205.234**

This cover sheet has been prepared by the persons presenting the attached instrument for recording. Any errors in this cover sheet **DO NOT** affect the transaction(s) contained in the instrument itself.

After recording, return to:  
Eric & Carolyn Sturm  
21791 Morelock Road  
Malin, OR 97632

Send Tax Statements to:  
Same as on file.

The date of the instrument attached is 11/30/06.

- 1) NAMES(S) OF THE INSTRUMENT(S) required by ORS 205.234(a)  
Non-Exclusive Pump License & Grant of Easement

\_\_\_\_\_

- 2) PARTY(IES)/GRANTOR, required by ORS 205.125(1)(b) and ORS 205.160:

Graham, Bill \_\_\_\_\_

Estate of Kunz, Violet \_\_\_\_\_

\_\_\_\_\_

- 3) PARTY(IES)/GRANTEE, required by ORS 205.125(1)(b) and ORS 205.160

Sturm, Eric \_\_\_\_\_

\_\_\_\_\_

- 4) TRUE and ACTUAL CONSIDERATION (if any), ORS 93.030

\$ \_\_\_\_\_

- 5) FULL OR PARTIAL SATISFACTION ORDER or WARRANT FILED IN THE COUNTY CLERK'S  
LIEN RECORDS, ORS 205.121(1)(c)

\_\_\_\_\_

- 6) RE-RECORDED to correct: \_\_\_\_\_  
Previously recorded as: \_\_\_\_\_

56-F

## Non-Exclusive Pump License and Grant of Easement

THIS AGREEMENT AND GRANT OF EASEMENT is made by and between BILL GRAHAM, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF VIOLET KUNZ, herein referred to as "the Estate; and ERIC STURM, herein referred to as "Sturm." The effective date of this agreement is November 30, 2006.

WHEREAS, Sturm has purchased from the Estate the real estate described in Exhibit "A" attached hereto, referred to herein as "the Sturm Property," and to the south of the Sturm Property is located real estate owned by the Estate, more particularly described in Exhibit "B" attached hereto and referred to herein as "the Estate Property;" and

WHEREAS, the Sturm Property and the Estate Property are separated by Rajnus Road; and

WHEREAS, There is located on the Estate Property a pump and electrical panel, owned by the Estate, where such pump is located on Malin Irrigation District water delivery ditch; and

WHEREAS, Sturm has pipe running from said pump to Sturm Property for the purpose of delivering irrigation water from the pump; and

WHEREAS, the parties have agreed that Sturm may use the pump facilities for a maximum of two irrigation seasons and that Sturm may locate Sturm's own pump facility on the south side of Rajnus Road on the Estate Property; and

WHEREAS, this agreement is intended to memorialize the terms of this grant of temporary license for use of the existing pump facility and a grant of easement for location of Sturm's own pumping facilities.

As additional consideration for the sale of the Sturm Property and in consideration of the mutual covenants herein and for other valuable consideration, the Estate grants and the parties agree as follows:

### CREATION OF LICENSE:

a. The Estate grants to Sturm a license personal to Sturm to use the pump facilities, to locate the pipeline as it is presently, to deliver irrigation water from the pump through said pipeline, according to the following terms:

b. This license shall terminate on or before the end of the 2007 irrigation season, and shall terminate prior to the end of the 2007 irrigation season in the event that and at such time that a.) Sturm shall sell the Sturm

Property to third party or parties, or b.) Sturm shall be in default according to the terms herein, or c.) Sturm obtains water delivery pursuant to Easement, below, or by any other means.

c. This license is not exclusive and the Estate may use the pump facilities for irrigation of the Estate's property. In the event that there is a conflict on the use of the pump, priority shall be as follows: first, irrigation by the Estate; second, irrigation by Sturm. The parties agree to cooperate in good faith regarding the use of the pump.

d. Sturm may enter the Estate Property at reasonable times for the sole purpose of maintaining and operating the pump and delivery lines, providing that Sturm may not unreasonably interfere with Estate's use of the Estate Property. Sturm is responsible for maintenance of Sturm's pipe delivery system, excepting for damage caused by the Estate, the Estate's employees or agents. Sturm shall remove such pipe and other personal property prior to 30 days after the termination of this license, except as may be utilized by easement terms, set forth below. Sturm shall leave the pump facility in good condition and to provide for the continued delivery of water to the Estate Property after removal of Sturm delivery pipe from the pump.

e. Sturm may use the license for delivery of water from the pump solely for reasonable irrigation, by good husbandry practices, of Sturm's Property as authorized by the statutes and rules of the State of Oregon, United States Bureau of Reclamation and Malin Irrigation District and for no other purpose. The Estate makes no representation of the right of Sturm to so irrigate. Sturm is familiar with the pump and its delivery system and the Estate makes no representations on the volume or quality of water available for delivery at any time.

f. The Estate shall pay utility charges for running the pump and Sturm shall pay to the Estate the reasonable prorated amount for such pumping costs. Such payment to the Estate shall be on or before 10 days after such bill is presented to Sturm. In the event of dispute as to the amount of any prorate, then Sturm shall pay not less than 35% of such utility bill pending final resolution of such amount. If the parties are unable to agree on the amount of such prorate within 30 days, then the amount of payment shall be presented to arbitration as set forth below. Notwithstanding the above, Sturm shall pay 100% of such utility bill or pumping costs if the Estate is not utilizing the pump for irrigation. In the event that such payment is not made by the 10th day after presentment to Sturm, then a penalty of \$100 shall be added to such payment owing, and an additional penalty of \$100 shall be added each month thereafter, until paid in full.

g. In the event that pump maintenance is required during the term of this license, then such costs of repair or replacement shall be shared equally by the parties. However, if such maintenance or replacement is caused by the negligence or intentional act by one party, then such costs shall be borne by that party.

h. In the event that Sturm shall fail to pay any amount owing herein and such failure to pay shall continue for more than 30 days, then this agreement shall immediately terminate and Sturm's rights herein shall cease.

i. In the event that a dispute arises as regards prorate of pumping costs or pump and pump maintenance costs, the parties agree to submit such dispute to arbitration where each party appoints one arbitrator and those two arbitrators choose a third. The three arbitrators shall decide the resolution of said dispute, and the parties shall be bound thereby. The costs of arbitration shall be borne equally by the parties. The parties may agree to other forms of arbitration.

j. This license shall bind and inure to the benefit of the immediate parties hereto; this license is personal to Sturm, but is binding upon the Estate's successors and assigns.

#### EASEMENT:

1. EASEMENT: The Estate hereby grants an easement to burden the Estate Property and for the benefit of Sturm Property.

2. USE: Sturm may utilize the easement property for purposes of pump facility construction and maintenance, and all lawful purposes consistent with the terms of this agreement, and specifically includes, but is not limited to the right to deliver water to Sturm Property for any lawful purpose. Sturm may locate an irrigation pump, electric utility delivery to said pump, pumping facilities and pipe for the delivery of water subject to the terms herein. The easement shall be for construction, maintenance and utilization of the above described facilities located on the easement property for water delivery to Sturm Property. These easement rights shall be perpetual. All costs associated with construction and maintenance shall be the responsibility of Sturm. It is recited that the operation of the pump is subject to rules and regulations of Malin Irrigation District and the United States Bureau of Reclamation; the easement includes the right to manipulate boards downstream of the pump consistent with due care of the Estate's property and of the regulations and policies of Malin Irrigation District or that district's successor. All use shall be according to good husbandry and good irrigation practices.

3. INGRESS AND EGRESS: Sturm has the right of ingress and egress to maintain and reconstruct the facilities providing such access shall be limited to reasonably operate, maintain and replace the pumping facility, taking due care to minimize interference with the Estate's use of the Estate Property

4. RUNS WITH THE LAND: This easement shall run with the land. This document shall be recorded in the records of Klamath County, Oregon, prior to construction of any facilities.

5. LOCATION: Sturm may locate the pump and related facilities on the bank of the Malin Irrigation District delivery ditch in an area of approximately 1,500 square feet of the Estate Property, more particularly described as 50 feet x

Kuhnz/Sturm License and Easement.

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30 feet east of the centerline of the gravel access road and south of the centerline of Rajnus Road, and may not construct or enter the property south of said delivery ditch without obtaining the prior approval of the Estate. The pump facilities shall be located to the east of the entry way from Rajnus Road to the Estate Property. Sturm may also manipulate the structure to the east of said entry way for water level in the delivery ditch and to spill water to the drain to the east of structure, providing such activity is necessary and reasonable in relation to good irrigation practices.

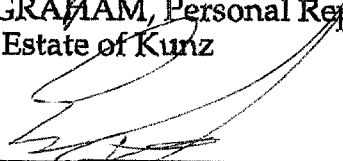
6. MODIFICATION OF AGREEMENT: This agreement may be modified by the written agreement of all parties hereto, or their respective heirs, assigns or personal representatives, as owners of the affected parcels.

7. BINDING ON SUCCESSORS: This Easement Agreement is binding not only on the parties hereto, but on their heirs, successors and assigns and personal representatives, if any.

If suit or action is instituted to enforce any of the provisions of this Contract, the party prevailing therein shall be entitled to recover from the other such sum as the Court may adjudge reasonable as attorney's fees therein, including any appeal thereof. This agreement was prepared at the direction of the parties by Justin Throne, attorney at law, who represents the Estate in this transaction. Sturm has been advised to obtain legal counsel or other advice prior to signing this agreement and has had opportunity to do so. This agreement shall not be interpreted for or against either party by reason of such representation and preparation of this agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands.

  
BILL GRAHAM, Personal Representative  
of the Estate of Kunz

  
ERIC STURM

STATE OF OREGON                 )  
County of Klamath               ) ss.

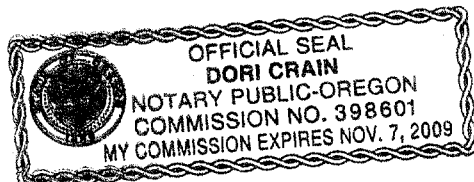
Personally appeared before me the above named Eric Sturm, and acknowledged the above instrument to be his voluntary act and deed.



Notary Public for Oregon  
My Commission expires: 11/7/09

STATE OF OREGON                 ]  
County of Klamath          ] ss.

Personally appeared before me the above named Bill Graham, the Personal Representative of the estate of Violet Kuhnz, and acknowledged the above instrument to be his voluntary act and deed on behalf of such estate.



Notary Public for Oregon  
My Commission expires: 11/7/09

## **EXHIBIT A**

### **LEGAL DESCRIPTION:**

The Northwest Quarter (NW1/4) of the Northeast Quarter(NE1/4) of Section Fifteen (15) in township Forty-one (41) South, range Twelve (12) East of the willamette Meridian, all in the County of Klamath, State of Oregon. Less and Except any portion that lies within the County roads.

Exhibit B

The Southeast quarter of the Northwest quarter of Section 15, Township 41 South Range 12 East of the Willamette Meridian, excepting 2 acres more or less deeded to W. J. Holbrook at ux by Deed 94, page 232 and excepting 2 acres more or less deeded to Louis Kalina, Jr. by Deed 94, page 309;

and

The Southwest quarter of the Northeast quarter of Section 15, in Township 41, Range 12 East of the Willamette Meridian, containing forty acres, subject however to right of way for ditches conveyed to the Malin Irrigation District.