

2010-012571

Klamath County, Oregon

AFTER RECORDING, RETURN TO:

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



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10/26/2010 09:18:36 AM

Fee: \$57.00

EASEMENT AND RIGHT OF FIRST REFUSAL

DATE: October 19, 2010

BETWEEN: Anthony B. Bair
9831 Spring Lake Road
Klamath Falls OR 97603

"Owner"

and

Edward T. Bair
8728 Spring Lake Road
Klamath Falls OR 97603

"Grantee"

RECITALS:

A. Owner owns certain real property in Klamath County, Oregon described on Exhibit "A" attached hereto and incorporated herein by this reference ("the Property").

B. Located on the Property owned by Owner near the Southwest corner is an irrigation well, which historically has been used by Bair Farm, LLC. to irrigate land owned by Owner, land owned by Grantee, and land farmed by Bair Farm, LLC.

C. The well is currently operated by Bair Farm, LLC. and all costs of operation and maintenance are paid by Bair Farm, LLC. The parties desire to provide for access and use by Grantee in the event, for any reason, Bair Farm, LLC. terminates or no longer has access to the well or fails to operate and maintain the well.

AGREEMENT

For valuable consideration, the parties hereby mutually and severally covenant and agree as follows:

1. Owner grants to Grantee for a period of 99 years from the date of this Easement an

easement for ingress and egress on, across, over, and under the land described on Exhibit A to the well for the purpose of operating, maintaining, replacing, improving, and enlarging the well. This Easement includes the right to operate, maintain, replace, relocate, and enlarge the pipelines that convey water from the well to Grantee's land and other land farmed by Grantee or by Bair Farm, LLC., and the electrical power lines and all other improvements used in conjunction with the well. Owner also grants to Grantee, to the extent allowed by law, the right to use and exercise Owner's right to access the land described on Exhibit A along the USBR Lost River Diversion Channel right-of-way.

2. In the event that Bair Farm, LLC. no longer operates and maintains the well, then the parties agree:

(a) To cooperate with each other in good faith to maintain the well, pump, and other equipment in good operating order to provide an uninterrupted supply of water to each party. Either party may undertake to make any repairs required to maintain the well and improvements upon not less than 48 hours prior notice to the other party. Provided, however, that in the event of a failure of the well to provide water, either party may make said repair after first attempting to contact the other party personally, by telephone, or email.

(b) The costs of operating and maintaining the well shall be apportioned to each party based on that party's proportionate use of water from the well during the prior twelve-month period.

(c) Each party shall indemnify and hold the other party harmless from any and all claims arising or relating to that party's use and operation of the well and the delivery of water from the well.

3. Owner agrees that during the term of this Easement, Owner will not sell, transfer, exchange, grant an option to purchase, lease, or otherwise dispose of the Property or any part of, nor interest in, the Property without first offering the Property to Grantee on the terms and conditions set forth in this Easement. As used in this Easement, the term "sell" includes a ground lease of the Property with primary and renewal terms of more than 15 years in the aggregate.

(a) When Owner receives from a third party (the "Third-Party Offeror") a bona fide offer to purchase the Property, or a part of it, or an interest in it, Owner shall give Grantee written notice (the "Notice") of the price, terms, and conditions of the offer and deliver a copy of the executed contract evidencing the offer (the "Offer") to Grantee.

(b) When Grantee receives the Notice and a copy of the Offer, Grantee shall have the prior and preferential right to purchase the Property (or the part of or interest in the Property covered by the Offer, as the case may be) at the same price and on the same terms and conditions as are contained in the Offer, except that if Grantee exercises the right of first refusal by electing to purchase the Property then (1) the closing of the transaction contemplated by the Offer shall take place no earlier than 90 days after the date that Grantee elects to exercise the right of first refusal, and (2) Grantee shall receive a credit against the sales price of the Property in an amount equal to

any brokerage commission that Owner may save by selling the Property to Grantee rather than the Third-Party Offeror.

(c) Grantee shall have 15 days from the date that Grantee receives the Notice and a copy of the Offer to notify Owner whether Grantee elects to purchase the Property pursuant to the terms of the Offer. If Grantee elects to exercise its right to purchase the Property, then, in addition to giving Owner written notice of its election within the 15-day period, Grantee also shall tender an amount equal to the earnest money deposit, if any, specified in the Offer, which shall be held and used in accordance with the terms of the Offer.

(d) If Grantee fails to timely exercise its right to purchase the Property pursuant to the terms of this Easement, then Owner shall be entitled to sell the Property according to the terms of the Offer to the Third-Party Offeror, free and clear of Grantee's option to purchase, but subject to Grantee's easement rights pursuant to this Easement.

(e) If Grantee fails to timely exercise its right to purchase the Property pursuant to the terms of this Easement, and for any reason Owner shall not sell or convey the Property to the Third-Party Offeror on the terms contained in the Offer within six months of Grantee's election not to purchase, then Owner must resubmit the Offer as well as any other offer to Grantee before selling the Property, and such offers shall be subject to Grantee's right of first refusal under this Easement.

4. In the event that either party initiates any legal action or suit to enforce the terms of this Easement, including a suit for damages resulting from the breach of this Easement, then the prevailing party shall be entitled to a Judgment against the losing party for the prevailing party's reasonable costs and attorney's fees incurred in such suit or action as may be determined by the trial court or by an appellate court on appeal.

5. Time is of the essence of this Easement. Each party shall perform the provisions hereof in good faith and without unnecessary delay.

6. Except as may be otherwise expressly provided in this Easement, any notice or communication between the parties hereto required to be given hereunder shall be given in writing, by personal delivery, facsimile, email, or mailing the same, postage prepaid to the other party, at the address or numbers set forth on page 1 of this Easement or to such other addresses or numbers as either party may hereafter provide to the other in writing. Any communication or notice so addressed and mailed shall be deemed to have been received three days after mailing. Any communication or notice delivered personally, by telephone, email, or facsimile shall be deemed to have been given when receipt of transmission is generated by the transmitting machine or when personally delivered and received by the other party.

7. This Easement shall be binding upon and inure to the benefit of Owner and Grantee, and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto executed this Easement to be

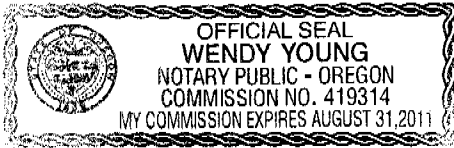
effective on the date set forth above.

Anthony B. Bair
Anthony B. Bair, "Owner"

Edward T. Bair
Edward T. Bair, "Grantee"

STATE OF OREGON, County of Klamath) ss.

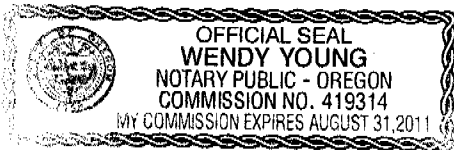
This instrument was acknowledged before me on October 19, 2010 by
Anthony B. Bair.



Wendy Young
Notary Public for Oregon
My Commission Expires: 8.31.2011

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on October 19, 2010 by
Edward T. Bair.



Wendy Young
Notary Public for Oregon
My Commission Expires: 8.31.2011

EXHIBIT "A"

That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 27, Township 39 South, Range 9 East of the Willamette Meridian, lying South of the USBR Lost River Diversion Channel, in the County of Klamath, State of Oregon. LESS AND EXCEPTING any portion that lies within the drains and canals.

Klamath County Assessor's Parcel No. R3909-2700-1400