

After recording return to:

Pete Alan Nevin and Malinda B. Nevin
 17017 Highway 140E
 Klamath Falls, OR 97603

2014-003585
 Klamath County, Oregon
 04/17/2014 03:44:32 PM
 Fee: \$77.00

WELL AGREEMENT; GRANT OF EASEMENTS

I. Parties and Effective Date

THIS AGREEMENT is made by and between the following parties:

1. JOHN M. VENABLE, herein referred to as "Venable."
2. PENNY LEA LASSETT AND PATRICIA ANN VENABLE, AS SUCCESSOR TRUSTEES UNDER DECLARATION OF TRUST DATED JULY 27, 1982, herein referred to a "NFT," which is an intended reference to this Trust as the Nevin family trust.
3. PETE ALAN NEVIN and MALINDA B. NEVIN, herein referred to as "Nevin."

The effective date of this agreement is February 8, 2014.

II. Recitals and Definitions:

- Venable is fee simple owner of the real estate herein referred to as "Venable Parcel," and is more particularly described in Exhibit "A" attached hereto as Venable Parcel.
- "Venable Benefitted Acres" is 223.9.
- NFT is fee simple owner of the real estate herein referred to as "NFT Parcel" and is more particularly described in Exhibit "A" attached hereto as NFT Parcel.
- "NFT Benefitted Acres" is 64.6.
- Nevin is fee simple owner of the real estate herein referred to as "Nevin Parcel" and is more particularly described in Exhibit "A" attached hereto as "Nevin Parcel."
- "Nevin Benefitted Acres" is 233.6.
- "Prorations" and "Prorated Basis" shall be that owner of Venable Parcel is responsible for 42.9%, owner of NFT Parcel is responsible for 12.4% and owner of Nevin Parcel 44.7% of costs.
- "Swan Lake Junction Well" is that irrigation well presently located on Nevin Parcel in Section 23, said well being referred to by the same name in Oregon Water Resources Department (OWRD) filings, permits, and certificates, and is not to be confused with Deer Ridge Well, which is located to the east of Swan Lake Well.
- Swan Lake Junction Well is located at and near well common facilities, including casing, pump, and electrical panels, herein referred to as "Well Facilities."
- Exhibit "B" is a sketch of the facilities and anticipated delivery systems.
- The parties have been operating under oral agreements which provide for delivery of irrigation water from Swan Lake Junction Well to benefit the Parcels.
- The parties are in process of transferring water rights among benefitted parcels and sources of wells to result in the allocation of acres benefitted from Swan Lake Junction Well to equal the above Benefitted Acres to each party's Parcels.
- Swan Lake Junction Well and many Well Facilities are in excess of 50 years old and the parties have had the opportunity to conduct their own investigation of the condition of these, prior to signing this agreement. They have also been

\$72.00

receiving the benefit of the Well and Well Facilities and are familiar with the apparent condition and operability.

-Swan Lake Junction Well outflow presently has installed thereon a pressure pump and related facilities owned by Nevin and benefitting solely Nevin's Parcel.

- Surface water delivery presently includes open ditch to common property line into a drain ditch located on the boundary of NFT and Nevin property. The function of said drain ditch includes water delivery to Venable Parcel and to NFT Parcel. Said drainage ditch is referred to herein as "Common Drain."

-NFT has located pump in Common Drain for irrigation of NFT Parcel and Venable receives water deliveries at the southern end of Venable Parcel.

-"Common Costs" shall include maintenance, repair, bills, and item replacement including electricity costs, common pump oil, insurance premiums for electricity or lightning damage, and other reasonable expenses as determined by the person paying for such items. Common Costs include maintenance of said Well, Well Facilities, and delivery system through Nevin Parcel.

-This agreement defines the easements, burdens, benefits and obligations of the parties.

III. Agreements and Grants.

The following is declared and agreed to be restrictions, benefits, burdens and agreements to run with the title to Venable Parcel, NFT Parcel, and Nevin Parcel. and to run with the land, as a benefit to all three Parcels and burden to NFT Parcel and to Nevin Parcel:

A. Grant Which Burdens Nevin; Benefits All Parties. Nevin hereby grants to NFT and Venable a non exclusive easement on and across Nevin Parcel for the existing well, locations of Well Facilities and for delivery of water as presently located on Nevin Parcel. Such delivery from Well Facilities to Common Drain is presently by open ditch. Nevin may replace and relocate such open ditch with low pressure pipe, and NFT and Venable shall cooperate and contribute to pipes, structures or valves associated with delivery to pump and sump located in Common Drain.

B. Grant Which Burdens Nevin and NFT; Benefits All Parties. Nevin and NFT grant to Venable a non exclusive easement in Common Drain for water delivery to Venable Parcel.

C. Sharing Prorata Common Costs. Each party shall be responsible for maintenance of their respective pumps, utilities and water delivery lines, where such delivery is unique to each party's respective Parcels. The parties agree to share on Prorated Basis the costs of all common maintenance, replacement, and costs; WITH THE EXCEPTION damages, replacement or maintenance which is caused by a actions of a Party, a Party's agents, contractors or employees, in which case such costs shall be borne solely by the Party causing damage.

Initially, Nevins shall provide items of Common Costs and inform the others. Upon presentment of statement from person providing such costs, the parties receiving statements shall promptly pay such person the Prorated amounts, and in any event within 30 days of presentment of statement of costs.

Presentment of statement of costs may be by hand delivery, US Postal Service delivery, email delivery, or fax delivery.

In the event that water transfers requested with the OWRD result in different Benefitted Acres than above set forth, the Parties agree to adjust the Prorated Basis to so reflect such actual acres in completed transfers, as regards Swan Lake Junction Well.

D. Uses Limited. It is agreed each party may use easements granted herein solely for delivery of water and shall be limited to purposes as described and allowed by Oregon Water Resources Department for Swan Lake Junction Well water, and no Party may use Well, the delivery system and water delivered for any other purpose, without first obtaining written permission of the other parties.

E. Advance Communications and Operations. The Parties shall communicate regularly regarding the operation of the irrigation system and their respective needs, and shall communicate to the others, whenever possible, in advance of irrigation needs and use, and of maintenance requirements and schedules. The Parties agree that the owner of Nevin Parcel shall have initial primary responsibility of operating the pump and overseeing repairs, maintenance, and operations. The Parties shall promptly reimburse owners of Nevin Parcel, and others who provide, for electricity, oil and any other common costs on the Prorated Basis. In the event that common maintenance is conducted or desired by owners of NFT or Venable Parcels, then attempts to communicate with owner of Nevin Parcel shall be made in advance of such operations, repairs, maintenance or otherwise. Except as to maintenance, replacement or repair which is caused by actions of one party as set forth in "C." above, no Party shall be responsible to the others for damages caused by actions or failure to act as regards the rights and duties herein, **with the exception** if such damages are caused by gross negligence. For purposes herein, "gross negligence" is a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both.

F. Non Prorated Costs. The Parties agree that individual Parties shall be responsible for repairs and costs that were caused by their individual actions, as above set forth. In addition, in the event that pumping is utilized for only one or two of the parties for a period of one week or longer, electricity costs associated with such pumping shall be paid for by such Party or Parties using the well. This provision is an agreement to modify Prorata provisions to more fairly apply to land idling on portion or all of any Party's property, or for irrigation outside the irrigation season utilized by the other Parties, or for other reasons.

G. Shortage. The Parties understand that there may be times of shortage of water. They agree to cooperate in such event and give deference to extraordinary need such as frost protection or otherwise. In the event of disputes in the event of water shortage, they may appoint the Water Master or other appropriate person to make allocations, taking into account needs, actual use, rate and duty of water rights and other factors.

H. Reserve Fund for Capital Well Costs. The parties shall contribute \$5.00 per benefitted acre for the years 2014, 2015 and 2016, to be reduced to \$2.00

per benefitted acre in following years to reserve fund. Such reserve fund may be accessed in the event of major well, pump or casing maintenance or repair is required. Such fund shall be coordinated and established by Nevin, with procedures reasonable to protect said fund from possible creditors or third parties, while allowing access for such anticipated major costs. The account shall be accessible by any of the parties, providing that any withdrawal will require consent of at least 2 of the parties, with the requirement that signatures for withdrawals shall be by signatures of at least 2 of the parties hereto. For instance, any check written or funds withdrawn shall require signatures and authority of 2 of the 3 parties hereto. Each party, shall designate a person for such signature. The parties shall cease such \$2.00 contribution when the funds in said reserve fund shall reach a total of \$20,000. With mutual consent, parties may agree to modify annual contributions and limits to such fund.

I. Improvements to the System. The Parties agree to meet and discuss cooperation on projects which could improve the delivery of water, such as storage, replacement of capital items and otherwise. Such improvements may require amendment to this Agreement to accurately reflect contributions of the parties.

J. Arbitration. In the event that a dispute arises as regards the subject matter of this agreement, the parties agree to submit 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 also agree on other procedures for such arbitration.

K. Successors Bound; Runs with the Land. This agreement shall bind and inure to the benefit of, as the circumstances may require, not only the immediate parties hereto but their respective heirs, personal representatives, successors in interest and assigns as well. The grants burden the land and benefits the land as herein set forth, and runs with the land.

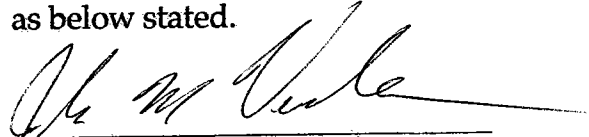
L. Attorney Representation and Provision. It is recited that Richard Fairclo, attorney, has prepared the initial draft of this document at the direction of the Parties. Richard Fairclo represents Nevin and does not represent the other parties. NFT and Venable have been advised to obtain their own attorney or other advice prior to signing this agreement and have had opportunity to do so. This document shall not be interpreted to favor any person by reason of such representation and preparation of the draft document.

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.

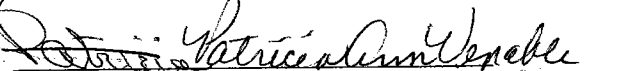
M. Changes Require All Parties. Withdrawal of the rights and obligations of the respective parties or the inclusion of additional premises shall be effective only upon written consent of all parties to this Agreement and upon such terms that are mutually agreeable.

N. Captions. Captions are for convenience and are not substantive of the meaning of any provisions.

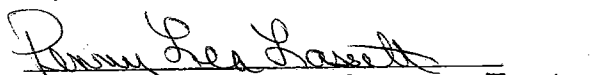
IN WITNESS WHEREOF, the parties have hereunto set their hands this as below stated.


John M. Venable


Peter A. Nevin

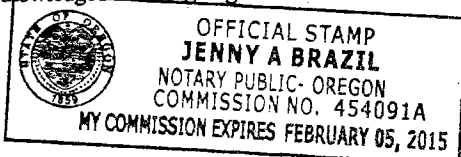

Patricia Ann Venable, As Successor Trustee
Under Declaration of Trust, Dated July
27, 1982.

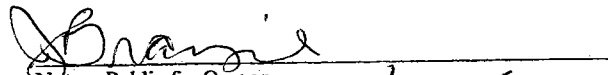

Malinda B. Nevin


Penny Lea Lassett, As Successor Trustee
Under Declaration of Trust, Dated July
27, 1982.

STATE OF OREGON, County of Klamath) ss.

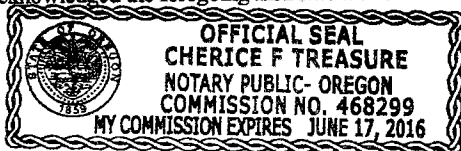
Personally appeared before me this 9 day of April, 2014, the above named John M. Venable, and acknowledged the foregoing instrument to be his voluntary act and deed.





Notary Public for Oregon
My Commission expires: 2/5/2015

STATE OF OREGON, County of Klamath) ss.

Personally appeared before me this 27 day of March, 2014, the above named Peter A. Nevin, and acknowledged the foregoing instrument to be his voluntary act and deed.





Notary Public for Oregon
My Commission expires: 6/17/2016

STATE OF OREGON, County of Klamath) ss.


Personally appeared before me this 27 day of March, 2014, the above named Malinda B. Nevin, and acknowledged the foregoing instrument to be her voluntary act and deed.




Notary Public for Oregon
My Commission expires: 6/17/2016

STATE OF OREGON, County of Klamath) ss.

Personally appeared before me this 9 day of April, 2014, the above named Patricia Ann Venable, who stated that she is Successor Trustee Under the Declaration of Trust, Dated July 27, 1982, and acknowledged the foregoing instrument to be her voluntary act and deed.


Notary Public for Oregon
My Commission expires: 6/17/2016

STATE OF OREGON, County of Klamath) ss.

Personally appeared before me this 9 day of April, 2014, the above named Penny ^{lea}~~Ann~~ Lassett, who stated that she is Successor Trustee Under the Declaration of Trust, Dated July 27, 1982, and acknowledged the foregoing instrument to be her voluntary act and deed.



Cherice F. Treasure
Notary Public for Oregon
My Commission expires: 6/17/2016

Exhibit "A"
Legal Descriptions, all Located in Klamath County, Oregon

Venable Parcel Legal Description:

Parcel 1 of Land Partition 50-07, said Land Partition being a Replat of Parcel 1 of Land Partition 65-94, situated in Sections 11, 12, 13, 23, and 24, Township 38 South, Range 10 East of the Willamette Meridian, and in Sections 18 and 19, Township 38 South, Range 11 $\frac{1}{2}$ East of the Willamette Meridian, Klamath County, Oregon.

HFT Parcel Legal Description:

Parcels 2 and 3 of Land Partition 50-07, said Land Partition being a Replat of Parcel 1 of Land Partition 65-94, situated in Sections 11, 12, 13, 23, and 24, Township 38 South, Range 10 East of the Willamette Meridian, and in Sections 18 and 19, Township 38 South, Range 11 $\frac{1}{2}$ East of the Willamette Meridian, Klamath County, Oregon.

Nevin Parcel Legal Description:

PARCEL A:

Parcel 2 of Land Partition 6-03 situated in Section 24, Township 38 South, Range 10 East of the Willamette Meridian, and the S $\frac{1}{2}$ of Section 30, N $\frac{1}{2}$ of Section 31 of Township 38 South, Range 11 $\frac{1}{2}$ East of the Willamette Meridian, Klamath County, Oregon.

PARCEL B:

^{1 and 2}
Parcel ¹2 of Land Partition 62-07, being a re-plat of Parcel 2 of "Minor Land Partition 81-144" situated in the following Sections: SW $\frac{1}{4}$ of 13, E $\frac{1}{2}$ of 14, E $\frac{1}{2}$ of 23, W $\frac{1}{2}$ of 24, W $\frac{1}{2}$ of 25 and NE $\frac{1}{4}$ of 26, Township 38 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon.

IRRIGATION & Well Easement

Exhibit A
Page 1 of 1