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After recording, return to:

Thomas Lee  
9540 E. Langell Valley Road  
Bonanza, OR 97623

2015-001833

Klamath County, Oregon

03/02/2015 12:55:24 PM

Fee: \$57.00

**AGREEMENT FOR SHARED WELL AND  
WATER DELIVERY SYSTEM  
(Operation, Maintenance, and Easements)**

This agreement is made this 27<sup>th</sup> day of February, 2015, between Thomas Lee and Peggy Lee, husband and wife, (herein, "Lee"), and Thomas Lee, Successor Trustee of the Bessie Bernice Fitzhugh Revocable Living Trust (herein collectively, "Trustee").

**RECITALS**

A. WHEREAS, Lee owns a parcel of real property in Klamath County, Oregon, which is legally described as that portion of the SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 34, Township 39 South, Range 12 East, W.M., lying southwesterly of the County Road (herein, "Parcel One"); and

B. WHEREAS, Trustee owns an adjacent parcel of real property in Klamath County, Oregon, which is legally described as the West Half of the Northwest Quarter and the West Half of the Southwest Quarter of Section 34, Township 39 South, Range 12 East, W.M., except that portion of the SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 34, Township 39 South, Range 12 East, W.M., lying southwesterly of the County Road (herein, "Parcel Two"); and

C. WHEREAS, Lee and Trustee, or their predecessors, have for many years shared a well, along with the casing, pump, electrical service, and associated infrastructure, including a small holding reservoir, that is located on Parcel Two approximately 2430 feet north and 1220 feet east of the southwest corner of Section 34, Township 39 South, Range 12 East, W.M. (herein, the "Well")

D. WHEREAS, the Well is used to provide irrigation water to both Parcel One and Parcel Two, under Permit No G-12791 of the Water Resources Department (herein, the "Permitted Right"); and

E. WHEREAS, Parcel One and Parcel Two are located within the Langell Valley Irrigation District, and have appurtenant surface water rights (herein, the "Irrigation District Right"), and a shared point of diversion, pump(s), and water conveyance facility for the respective parcels has been developed that crosses adjacent real property (not owned by either party) to divert and convey water from the North Canal; and

f.  
62.00

F. WHEREAS, the parties also share a water piping and delivery system that, in pertinent part, runs in a north to south direction along the west side of Bunn Road, and crosses under East Langell Valley Road in order to deliver water to Parcel One (herein, together with the infrastructure described in the immediately preceding recital, the "Water Delivery System").

G. WHEREAS, Lee and Trustee desire by this agreement to memorialize their arrangements and to further set forth the respective rights and obligations of each party concerning the Well for exercise of the Permitted Right and Water Delivery System for exercise of the Permitted Right and Irrigation District Right.

\* \* \* \* \*

NOW THEREFORE, in consideration of \$1.00 and other valuable consideration, the receipt of which is hereby acknowledged, Lee and Trustee incorporate the foregoing recitals and enter into this Agreement, according to the following terms, covenants, and conditions:

1. Payment of Electricity for Regular Usage: Lee and Trustee agree that the party that uses the Well and Water Delivery System shall pay for that use. To the extent possible, the monthly payment for electricity charges shall be paid for in proportion to the use. If Trustee that uses water during any month during which Lee also uses water, or vice versa, the amount apportioned to each party shall be based on a mutual determination of historical and current data and estimations that demonstrate actual use. If the parties cannot agree on the apportionment for any month or standard billing period, the parties agree on certain presumptions to be used for said determination. In the case of the Well, the presumption shall be in proportion to the respective acreages of each parcel, which is to say that for Parcel One, the amount is 10% (the equivalent to 15 acres), and for Parcel 2, 90% (the equivalent to 135 acres). In the case of the Water Delivery System, the presumption shall be the percentage attributed to each parcel for acreage that is actually serviced by the Water Delivery System that is shared, which for Parcel One, shall be the equivalent to 15 acres, and for Parcel Two, shall be the equivalent of the number of acres served by the shared piping that is generally south of the point on Parcel Two where the holding reservoir is located. These presumptions may be rebutted in unique circumstances in which no reasonable person would determine that the actual use has been in accordance with those percentages

2. Maintenance: The parties shall maintain the Well and Water Delivery System in a workmanlike manner to ensure proper function, and such maintenance is deemed to be regular and ordinary, and shall include replacement of any broken piece or part. The parties shall not make improvements or extraordinary maintenance (such as deepening the well hole to ensure adequate water supply, for example) in the absence of unanimous agreement between the parties. Any expenses associated with maintenance shall be apportioned in the same manner and according to the same formula as set forth in the

preceding Paragraph 1, and shall be coordinated as set forth in the subsequent Paragraph 3.

3. Coordination for Payment of Expenses: Each party shall keep the other party informed as to any statements or invoices for the payment of electricity, maintenance, and any other charges associated with the well. The parties agree to coordinate their efforts at apportionment so that any outstanding expense is paid in a timely manner. In the event of a *bona fide* emergency, the party that discovers the emergency shall make the necessary repairs out-of-pocket without consultation and shall subsequently seek *pro rata* reimbursement from the other party; however, the parties must first consult with each other prior to making any repairs that are not of an emergency nature.

4. Coordination of Use: The parties recognize and agree that they must regularly communicate in order to coordinate their use, and that there may be times and circumstances where individual use is preferable to joint use, and vice versa. The parties agree to use their best efforts in good faith to accomplish an orderly protocol for irrigation of their respective parcels, and in the event of any dispute, agree to the same

5. Easements: As part of the consideration stated previously for this agreement, Trustee grants to Lee an easement for the Well and the Water Delivery System, both as previously defined, for any lawful purpose contemplated by this Agreement. The easement shall burden Parcel Two and benefit Parcel One. The easement shall also include the right to access, along and across Parcel Two, any portion of the easement in order to maintain, repair, inspect, utilize, or any other lawful purpose that is related to the use of the easement, and the location of such access shall be the most practical and easiest route, using existing roads and paths.

6. Ownership: Any part of the Well or Water Delivery System that is not a fixture, or that is deemed to be personal property, shall be owned by the parties in the percentages according to the presumptions as set forth in Paragraph 1.

7. Prohibited Expansion of Use: Neither party may expand or enlarge the place of use for water from the Well outside of the Permitted Right without the written consent of the other party, and the recordation of any modification to this Agreement that may be necessitated or desired by such an action. Selling or leasing water where the right is severed from the land it is appurtenant to as of the date of this Agreement, or otherwise obtaining consideration for surface water or groundwater (including consideration paid to forbear the use of the water), whether permanently or temporarily, is prohibited unless consent is given by the other party in writing.

8. Arbitration: If there is any dispute or controversy after good-faith consultation between the parties, they shall choose an arbitrator that is mutually agreeable, who shall hear and decide the matter and render a written decision, and such resolution shall be conclusive and binding. The expense of arbitration shall be shared equally between the parties, unless the arbitrator determines that a different apportionment would serve the interests of equity.

9. Agreement Runs with Land: This Agreement is not personal in nature, but is appurtenant to and shall run with the land, binding all heirs, successors, and assigns.

10. Preparation of Agreement for Lee: This Agreement has been prepared for Lee by their attorney, representing their interests only; and Trustee is responsible and encouraged to seek separate legal counsel for representation in this transaction.

Lee:

Trustee:

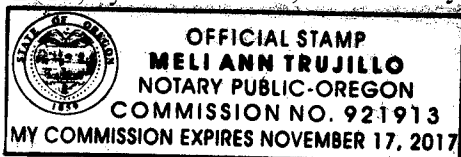
Thomas Lee  
Thomas Lee, husband

Thomas L. Lee Trustee  
Thomas Lee, Trustee of the Bessie  
Bernice Fitzhugh Revocable Living Trust

Peggy Lee  
Peggy Lee, wife

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

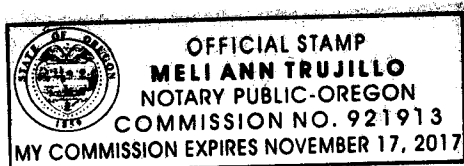
SUBSCRIBED AND ACKNOWLEDGED before me this 27<sup>th</sup> day of February, 2015, by Thomas Lee, individually and as Trustee, who personally appeared.



Meli Ann Trujillo  
Notary Public for Oregon  
My commission expires: 11-17-2017

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

SUBSCRIBED AND ACKNOWLEDGED before me this 27<sup>th</sup> day of February, 2015, by Peggy Lee, who personally appeared.



Meli Ann Trujillo  
Notary Public for Oregon  
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