

2019-006725

Klamath County, Oregon



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06/14/2019 02:38:28 PM

Fee: \$122.00

After recording return to:

Horsefly Irrigation District
2797 Market St.
Bonanza OR 97623

This space is reserved for recorder's use.

AMENDMENT TO LEASE AGREEMENT

This Amendment to Lease Agreement ("Amendment") is made effective 10 June, 2019 ("Effective Date") by and between Roxanne Marie Payne, Trustee and Kennedy Joseph Payne, Trustee of the Paul & Marilyn Hoefler Joint Revocable Living Trust (collectively "Hoefler" or "Landlord") and Horsefly Irrigation District, an irrigation district organized pursuant to Oregon Revised Statutes Chapter 545 ("HID" or "Tenant").

RECITALS

A. Landlord's predecessor in interest (Paul Hoefler, Marilyn Hoefler, and Joe Hoefler) and Tenant entered into a lease dated effective March 31, 1967 (the "Original Lease") (attached as "**Exhibit A**") for the lease of an irrigation well located on property owned by Hoefler in Sections 26 and 36, Township 38 South, Range 11½ East, W.M. in Klamath County, Oregon ("Hoefler Property").

B. Tenant wishes to construct a water discharge pipeline to connect the irrigation well to its main canal.

C. Landlord wishes to construct a new well to supply its domestic needs on the Hoefler Property.

D. Landlord and Tenant desire to amend the Lease to extend the original term and otherwise modify the Lease as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals True; Definitions Incorporated.** Landlord and Tenant acknowledge that the recitals set forth above are true and accurate and are incorporated herein. Unless otherwise expressly provided herein, the defined terms set forth in this Amendment have the exact meanings given those terms in the Lease.

2. **Lease Extension.** The Original Lease expiration date of March 19, 2066 is hereby amended and extended by fifty (50) years to 2116 (the "Extended Term").

3. **Pipeline Construction.** Landlord grants Tenant permission to construct an underground discharge pipeline leading from the irrigation well to the HID main canal. The pipeline must be constructed at a minimum depth of thirty (30) inches, so as to permit Landlord to continue farming the overlying land in its usual and customary manner.

4. **Easement.**

4.1 **Grant of Easement.** Landlord grants to Tenant an easement for the design, construction, operation, inspection, maintenance, repair, and replacement of an underground discharge pipeline leading from the "Hoefer" irrigation well to the HID main canal. The pipeline easement is twenty (20) feet in width, being ten (10) feet on either side of the centerline of the pipeline. The course and width of the pipeline easement (the "Easement Area") is depicted on **Exhibit B** hereto. Landlord also grants to Tenant an easement across the Hoefer Property for ingress to and egress from the well and pipeline as is necessary and reasonable to access the well and pipeline.

4.2 **All Prior Rights Remain in Full Force and Effect.** Tenant retains all statutory and common law rights of access and operation as Tenant has enjoyed since the inception of HID.

4.3 **Encroachments Prohibited.** Tenant requires unencumbered access to all irrigation facilities in order to operate and maintain its facilities in accordance with Oregon statutory law and HID's Rules and Regulations. Landlord agrees not to install or build any structures, fences, or other encroachments on, over, or across the Easement Area without first obtaining written permission from HID's District Manager. Any new fences or gates must be built under the specifications of HID under the direction of District staff with the understanding that suitable openings will be provided to enable HID's officers, employees, ditch rider, or other authorized personnel to traverse without hindrance.

4.4 **Tenant Activity in Easement Area.**

4.4.1 Tenant will attempt to cooperate with Landlord to minimize impacts to the Easement Area, but Tenant is not required to do so except as expressly provided in HID's Rules and Regulations or in the Lease or this Amendment.

4.4.2 Tenant will provide reasonable advance notice to Landlord before entering the Easement Area to undertake the initial construction work on the pipeline or any

pre-planned re-construction work in the future, and Tenant will attempt to coordinate such work in a manner so as not to interfere with Landlord's usual and customary farming activities. However, in the event such interference cannot reasonably be avoided due to the construction schedule, Tenant shall have the right to proceed with its construction activities. Tenant's notice to Landlord shall be made in person, by phone, or sent to the address then on file in Tenant's official records. Tenant is not required to notify Landlord before entering the Easement Area for other purposes.

4.5 Damage by Landlord. Landlord shall have the duty to use due care to avoid damage to Tenant's irrigation facilities. Landlord shall be liable for any damage, intentional or negligent, including damage from livestock under its possession or control. If such damages do occur, Tenant may assess the cost of repairs against Landlord.

5. New Well Construction. Tenant will construct a new 6-inch domestic use well on the Hoefler Property at a location to be mutually agreed upon by the parties. Tenant will construct the well at Tenant's expense. Landlord will be responsible for all other expenses related to the completion and use of the well for domestic purposes, including but not limited to the costs for any pump house, power, pump, and plumbing.

6. Continuing Effect. Except as modified by this Amendment, all covenants, agreements, terms, and conditions of the Lease remain in full force and effect.

7. Conflict Between Terms. In the event of a conflict between the terms of the Lease and this Amendment, the terms of this Amendment shall control.

8. Final and Complete Agreement. This Amendment and the Lease represent the final agreement between Landlord and Tenant regarding the subject matter hereof and may not be contradicted by evidence of prior, subsequent or contemporaneous oral agreements of the parties. No amendment or modification hereto shall be valid and binding unless expressed in writing and executed by both parties hereto. In the event of a conflict between the terms of this Amendment and the Lease, the terms of this Amendment shall control.

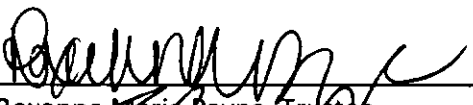
9. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall comprise by one and the same instrument.

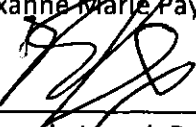
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Amendment as of the Effective Date.

LANDLORD

Paul & Marilyn Hoefler Joint Revocable Living Trust

By: 
Roxanne Marie Payne, Trustee

By: 
Kennedy Joseph Payne, Trustee

TENANT

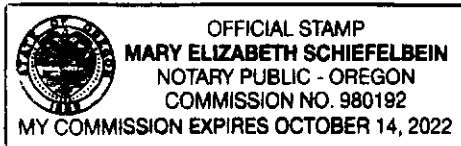
Horsefly Irrigation District, an Oregon irrigation district

By: 
Eric Mockridge, Board Chair

[NOTARY PAGE FOLLOWS]

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on this 13 day of June,
2019, by Eric Mockridge as Board Chair of the Horsefly Irrigation District board of directors.



Mary Elizabeth Schiefelbein

NOTARY PUBLIC FOR OREGON
My Commission Expires: 10/14/2022.

STATE OF OREGON)
) ss.
County of Washington

This instrument was acknowledged before me on this 8 day of June,
2019, by Roxanne Marie Payne, Trustee of the Paul & Marilyn Hoefler Joint Revocable Living
Trust.

Sharon L. Canella

NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/3/2020

STATE OF OREGON)
) ss.
County of Washington



This instrument was acknowledged before me on this 8 day of June,
2019, by Kennedy Joseph Payne, Trustee of the Paul & Marilyn Hoefler Joint Revocable Living
Trust.

Sharon L. Canella

NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/3/2020



EXHIBIT A

"ORIGINAL LEASE"

1 THIS LEASE, Made and entered into between PAUL HUEFLER and MARILYN HUEFLER,
2 his wife, and JOE HUEFLER, a single man, hereinafter referred to as Lessors, and
3 HORSEFLY IRRIGATION DISTRICT, an irrigation district organized and existing
4 under the laws of the State of Oregon, hereinafter referred to as District,

WITNESSETH:

5
6 Lessors own real property in Klamath County, Oregon, including NW¼ and SE¼
7 NW¼ of Sec. 36, SE¼SE¼ and SW¼SE¼ of Sec. 26, all in Twp. 38 S.R. 11½ E.W.M.

8 There is situate on said NW¼ of said Sec. 36 a deep well which was original
9 drilled and constructed as an oil well and subsequently abandoned for oil well
10 purposes. Said well has been tested and found to have a capacity of 10 cubic
11 feet per second or 4500 gallons per minute of water suitable for irrigation pur-
12 poses.

13 Included in District are lands in Sections 26, 27, 34 and 35, above township
14 and range, entitled to water for irrigation purposes from District. District is
15 unable at times to supply water to said lands in amounts necessary for proper
16 irrigation thereof.

17 District wishes to lease the well above described from Lessors and to instal
18 therein pump and motor in order to furnish supplemental irrigation water to the
19 lands in District above referred to and irrigation water for certain other lands
20 not now entitled thereto from District.

21 The parties therefore covenant and agree to and with each other as follows:

22 (1) In consideration of the payments and agreements of District hereinafter
23 set forth:

24 (a) Lessors lease, demise and let unto District the well above described
25 and sufficient land, not exceeding one-quarter of an acre on which same is sit-
26 uate, for the operation and maintenance thereof, for the term of Ninety-Nine years
27 from March 20, 1967 until March 19, 2066, inclusive.

28 (2) Lessors give and grant unto District for said term the easement and right
29 of way thirty feet in width from said well for ditch and roadway purposes over
30 and across their lands above described for the purpose of maintaining and operating
31 said well and of constructing, operating, ^{and} repairing a ditch for conducting
32 water to lands in said District.

1 (3) Said well is situate 872 feet South and 230 feet East of Northwest cor-
2 ner of Section 36, Twp. 38 S. R. 11½ E.W.M. Said right of way shall be located
3 by District ten feet in width on the North and East sides and twenty feet in
4 width on the South and West sides of a line commencing at said well site and run-
5 ning Northwesterly over lands of Lessors described as NW¼ of Sec. 36 and
6 S½ of Sec. 26, all in above Township and Range.

7 (4) In consideration of the foregoing District covenants to and with Lessors

8 (a) District shall pay to Lessors \$100.00 annually on the first day of
9 April, commencing with the year 1967, throughout said term.

10 (b) District shall furnish Lessors at said well location irrigation water
11 for irrigation of 12.35 acres in said NW¼ and of 20.5 acres in said SW¼
12 of said Section 36, Township 38 S. R. 11½ E.W.M. Lessees shall pay irrigation
13 assessments thereon the same as other water users in the Dairy Division of said
14 District.

15 (c) District shall on demand, as additional rent, pay to Lessors annually,
16 commencing in 1967, a sum equal to that paid it by Lessors pursuant to the above
17 subparagraph (b).

18 (d) District shall repay to Lessors any additional tax paid by them by
19 reason of said well but not by reason of the pump, motor and appurtenances there-
20 to. Notwithstanding such installation of said pump, motor and appurtenances,
21 the same shall be and remain personal property of the District.

22 Lessors covenant that they shall cause the real property on which said well
23 is situate, and the right of way above described, to be released from the lien
24 of the mortgage to Federal Land Bank now on said land and other land of Lessors.

25 PROVIDED, ALWAYS, time shall be of the essence hereof and in the event
26 District shall fail, neglect or refuse to pay any rental herein provided, and
27 such failure shall continue for sixty days after notice of such failure shall have
28 been given it by Lessors by registered mail, addressed to District at Bonanza,
29 Oregon, Lessors may terminate this lease and remove the property of Lessee from
30 said land and be under no further obligation to District.

31 This agreement shall bind the parties and their heirs, successors and assigns,
32 and the water rights in said well shall be and remain appurtenant to the lands

1 benefited therefrom.

2 IN WITNESS WHEREOF, The parties have executed this 31 day
3 March, 1967.

4 William B. Thompson (SEAL)

5 Joe Hoefler (SEAL)

6 HORSEFLY IRRIGATION DISTRICT

7 BY Cecil C. Hunt
President

8 and BY Reginald E. Thomas
Secretary

10 STATE OF OREGON)
11 County of Klamath) SS March 31, 1967

12 Personally appeared the above named Paul Hoefler and Marilyn Hoefler, his
13 wife, and acknowledged the foregoing instrument to be their voluntary act and
14 deed. Before me:

14 Ernest Brown
Notary Public for Oregon
15 My Commission expires: Dec 13, 1967

16 STATE OF OREGON)
17 County of Klamath) SS March 31, 1967

18 Personally appeared the above named Joe Hoefler, a single man, and acknowledged
19 the foregoing instrument to be his voluntary act and deed. Before me:

19 Ernest Brown
Notary Public for Oregon
20 My Commission expires: Dec 13, 1967

21 STATE OF OREGON)
22 County of Klamath) SS

23 On this 31 day of March, 1967, before me appeared Cecil Hunt and Reginald
24 E. Thomas, both to me personally known, who being duly sworn, did say that he,
25 the said Cecil Hunt is the President, and he, the said Reginald E. Thomas is the
26 Secretary of Horsefly Irrigation District, the within named Corporation, and the
27 seal affixed to said instrument is the corporate seal of said Corporation,
28 and that the said instrument was signed and sealed in behalf of said Corporation
29 by authority of its Board of Directors, and Cecil Hunt and Reginald E. Thomas
30 acknowledged said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal the day and year last above written.

28 Ernest Brown
Notary Public for Oregon
29 My Commission expires: Dec 13, 1967

EXHIBIT B EASEMENT AREA

