

2019-007619

Klamath County, Oregon



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07/08/2019 09:49:01 AM

Fee: \$107.00

Returned at Counter

After recording, return to:
Horsefly Irrigation District
P.O. Box 188
Bonanza, OR 97623

Grantor:

Nicholas G. Noble and Lindsey P. Noble
25752 Highway 70
Bonanza, OR 97623

Grantee:

Horsefly Irrigation District
P.O. Box 188
Bonanza, OR 97623

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") dated this 3 day of July, 2019 is between Horsefly Irrigation District ("HID" or "District") and Nicholas G. Noble and Lindsey P. Noble ("Noble").

RECITALS:

A. HID is a subdivision of the State of Oregon, organized as an irrigation district under Oregon Revised Statutes Chapter 545 and is located in Klamath County, Oregon.

B. Noble is the owner of real property located at 25752 Highway 70, Bonanza, Oregon 97623 ("Noble Property"). The Noble Property consists of approximately 75 acres located in Section 36, Township 28 South, Range 11 ½ East of the Willamette Meridian, Klamath County, Oregon. The legal description of the Noble Property is attached hereto as Exhibit A to this Agreement and is incorporated herein by this reference.

C. HID owns, operates, and maintains irrigation delivery facilities on the Noble Property.

D. HID maintains the right to enter upon the land of a water user of the District for inspection, maintenance, and regulation of the ditches, pipelines, gates, pumps, and other water infrastructure pursuant to Oregon statute and the *Rules and Regulations Governing the Distribution and use of Water in the Horsefly Irrigation District* ("Rules and Regulations").

E. Noble shall allow HID access across his existing driveway approximately 800 feet south from Highway 70 to HID's main canal and pump. HID agrees to extend the driveway approximately 300 feet from its current location to HID's main canal. HID shall be responsible for the maintenance and repair of the 300 foot extension. Noble shall continue to be responsible for the maintenance of the driveway, as further depicted on Exhibit B.

AGREEMENT

In consideration of the covenants and conditions set forth in this Agreement and other good and valuable consideration, the parties agree to confirm and define the course and extent of HID's right to enter upon and access the Noble Property and HID's irrigation delivery facilities:

1. **Easement across Noble Property.** Noble hereby grants to HID a perpetual nonexclusive easement (the "Easement") in, over, across and through the Noble Property within the Easement Area. The Easement Area is thirty (30) feet in width, along the westerly boundary of the Noble Property. The Easement is granted to permit access to and use of the Easement Area as is reasonably necessary to allow for HID to design, construct, inspect, operate, maintain, repair and replace HID's well, pump and Irrigation Delivery Facilities. HID shall have the rights of ingress and egress along the Easement Area, as reasonably necessary, for HID's access to the Easement Area.

2. **All Prior Rights Remain in Full Force and Effect.** HID retains all rights of access and operation as HID has enjoyed since the inception of the District.

3. **Encroachments Prohibited.** HID requires unencumbered access to all Irrigation District Facilities in order to operate and maintain its facilities in accordance with Oregon statutory law and HID's *Rules and Regulations*. Noble 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 riders or other authorized personnel to traverse without hindrance.

4. **HID Activity in Easement Area.**

4.1 HID will attempt to cooperate with Noble to minimize impacts to the Easement Area.

4.2 HID will provide reasonable advance notice to Noble before entering the Easement Area to undertake any preplanned construction work on the Irrigation Delivery Facilities, but HID is not required to obtain Noble's permission before commencing any such work. Such notice shall be made in person, by phone, or sent to the address then on file in HID's official records. HID is not required to notify Noble before entering the Easement Area for other purposes.

4.3 HID, its agents, independent contractors and invitees shall use the easement to construct, reconstruct, maintain, repair and replace the pump and driveway leading thereto. This easement runs with Noble's real property described on the attached Exhibit A.

4.4 HID agrees to indemnify and defend Noble from any loss, claim or liability to Noble arising in any manner out of HID's use of the easement. HID assumes all risks arising out of their use of the easement and Noble shall have no liability to HID or others for any condition existing thereon.

4.5 This easement shall be perpetual and shall not terminate for periods of non-use by HID. Said easement may be terminated upon written agreement by Noble and HID, and will be binding upon their heirs, successors and assigns.

4.6 This easement is granted subject to all prior easements and encumbrances of record.

5. **Consideration.** In consideration for Noble granting this easement, HID covenants to the following:

5.1 Should the domestic well upon the Noble Property become contaminated or dry, HID will drill a new domestic well that is functional at HID's cost and expense.

5.2 HID shall procure and, thereafter, during the term of the easement, continue to carry comprehensive general liability insurance, naming Noble as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring twenty (20) days' written notice to Noble, before any change or cancellation, shall be furnished to Noble.

5.3 HID shall pay an annual rent equal to 1/3 of HID's annual assessments to the property, including any increase in the O&M costs related thereto.

5.4 If HID dissolves, the well, pumps and improvements shall become the property of Noble.

5.5 HID will ensure that the operation of the well does not produce excessive noise or create a nuisance to Noble. Should the well produce a nuisance, HID shall take all steps to mitigate the same.

6. Miscellaneous.

6.1 This Agreement may be amended only by an instrument in writing executed by all the parties.

6.2 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

6.3 Electronic and Facsimile Signatures. Electronic and Facsimile transmission of any signed original document, and retransmission of any signed electronic or facsimile transmission, will be the same as delivery of an original. At the request of any party, the parties will confirm electronic or facsimile transmitted signatures by signing an original document.

6.4 Further Assurances. Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, to carry out the intent and accomplish the purposes of this Agreement.

6.5 Waiver. Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

6.6 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.

6.7 Attorney Fees. If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

6.8 Injunctive and Other Equitable Relief. The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other parties will be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

6.9 Exhibits. The exhibits referenced in this Agreement are part of this Agreement as if fully set forth in this Agreement.

6.10 Severability. If any provision of this Agreement is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired.

6.11 Legal Counsel. Noble acknowledges that this is a legal document and that it has been advised to obtain the advice of legal counsel in connection with its review and execution of this

Exhibit A

All that part of the SE1/4 SE1/4 of Section 36, Township 38 South, Range 11 1/2 East of the Willamette Meridian, Klamath County, Oregon, lying South of the State Highway.

Also, the SW1/4 SE1/4 and all that part of the NW1/4 SE1/4 lying South of the State Highway, all in Section 36, Township 38 South, Range 11 1/2 East of the Willamette Meridian, Klamath County, Oregon.

37

1100 (NOBLE)
48.38 AC.

1300 (NOBLE)
0.87 AC.

1400
80.00 AC.
(O'HARRA)

1500
71.82 AC.
(LAW)

HORSEFLY

IRRIGATION

Improved
Rd
Well
DITCH

ok
Pg. 2 A

EXHIBIT B

