

2019-011159

Klamath County, Oregon



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09/25/2019 08:04:31 AM

Fee: \$137.00

Returned at Counter

Sherry Wells

### ASSIGNMENT OF LEASE WITH OPTION

THIS ASSIGNMENT OF LEASE dated this 24 day of September 2019

BETWEEN:

Arthur W. Davina and Mary M. Davina

(the "Assignor")

OF THE FIRST PART

- AND -

Sherry Wells and Keith Wells

(the "Assignee")

OF THE SECOND PART

#### Background

- A. This is an agreement (the "Assignment") to assign a lease in real property according to the terms specified below.
- B. The Assignor wishes to assign and transfer to the Assignee that lease (the "Lease") dated November 14, 2009, and executed by the Assignor as Lessee and by Cary Ann T. Bailey as Lessor.

**IN CONSIDERATION OF** the Assignor agreeing to assign and the Assignee agreeing to assume the Lease for the Premises, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, both parties agree to keep, perform and fulfill the promises, conditions and agreements below:

#### Premises

1. The Lease governs the following described premises (the "Premises") to the Assignor:

The certain real property described on the certain Tru Line Surveying, Inc. Legal Description Dated November 4, 2009, a copy of which is attached hereto, Marked Exhibit B, and incorporated herein by reference as if fully set forth.

### **Assigned Lease**

2. The Assignor assigns and transfers to the Assignee all of the Assignor's right, title, and interest in and to the Lease and the Premises, subject to all the conditions and terms contained in the Lease attached hereto Exhibit A.

### **Effective Date**

3. This Assignment takes effect on September 24, 2019 (the "Effective Date"), and continues until the present term of the Lease expires on November 14, 2108.

### **Assignor's Interest**

4. The Assignor covenants that:
  - a. the Assignor is the lawful and sole owner of the interest assigned under this Assignment;
  - b. this interest is free from all encumbrances.

### **Governing Law**

5. It is the intention of the parties that this Assignment, and all suits and special proceedings under this Assignment, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Oregon, without regard to the jurisdiction in which any action or special proceeding may be instituted.

### **Miscellaneous Provisions**

6. This Assignment incorporates and is subject to the Lease, a copy of which is attached hereto, and which is hereby referred to and incorporated as if it were set out here at length. The Assignee agrees to assume all of the obligations and responsibilities of the Assignor under the Lease.
7. This Assignment will be binding upon and inure to the benefit of the parties, their successors, assigns, personal representatives, beneficiaries, executors, administrators, and heirs, as the case may be.

8. The Assignee will also be responsible for assuming and performing all other duties and obligations required under the terms and conditions of the Lease after the Effective Date.

IN WITNESS WHEREOF the Assignor and Assignee have duly affixed their signatures under hand and seal on this 24<sup>th</sup> day of September 2019.

Dated: September 24, 2019

Assignor:

Arthur W. Davina  
Arthur W. Davina

Mary M. Davina  
Mary M. Davina

Dated: September 24, 2019

Assignee:

Sherry Wells  
Sherry Wells

Keith Wells  
Keith Wells

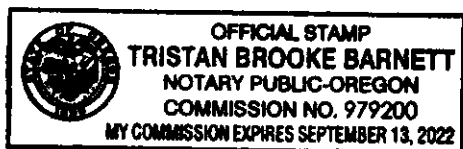
Dated: September 24, 2019

Witness:

Melissa B. Strom  
Printed

[Signature]  
Signature

Subscribed and sworn to before me this 24<sup>th</sup> day of September 2019.



Tristan Brooke Barnett  
Notary Public for Oregon  
My Commission expires: 9.13.22

JOHN HEATON P.L.S.

**TRU SURVEYING, INC. LINE**

2333 SUMMERS LANE  
KLAMATH FALLS, OREGON 97603  
PHONE: (541) 884-3691

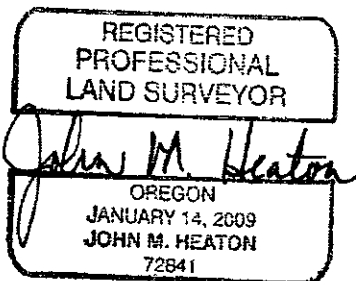


NOVEMBER 4, 2009

**LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN GOVERNMENT LOT 1 OF SECTION 28, T40S, R9EWM, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE 1/4 CORNER COMMON TO SAID SECTION 28 AND SECTION 21, T40S, R9EWM; THENCE N89°51'05"W, ALONG THE SECTION LINE COMMON TO SAID SECTIONS 21 AND 28, 489.01 FEET; THENCE, LEAVING SAID SECTION LINE, S00°05'50"W 48.38 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE N89°54'10"W 79.48 FEET; THENCE S00°05'50"W 72.17 FEET; THENCE S89°54'10"E 79.48 FEET; THENCE N00°05'50"E 72.17 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 0.13 ACRES, MORE OR LESS, WITH BEARINGS BASED ON RECORD OF SURVEY 6847 ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.



*John M. Heaton*  
JOHN M. HEATON P.L.S. 72841

RENEWAL DATE 6/30/11

**EXHIBIT B**

Exhibit B Page 1 of 1

**LEASE WITH OPTION**

THIS INDENTURE, made and entered into effective the 11<sup>th</sup> day of November, 2009, by and between CARY ANN T. BAILEY, hereinafter referred to as the Lessor, and ARTHUR W. DAVINA and MARY M. DAVINA, husband and wife, hereinafter referred to as the Lessee;

**WITNESSETH:**

That the said Lessor, for and in consideration of the covenants hereinafter set forth to be kept and performed by the Lessee, has by these presents demised and leased to the Lessee, that certain real property described on that certain Tru Line Surveying, Inc. legal description dated November 4, 2009, a true copy of which is attached hereto, marked as Exhibit A, and incorporated herein by reference as if fully set forth.

To Have and to Hold the same to Lessee from the effective date hereof for a period of 99 years; And the Lessee, in consideration of the leasing of the premises, as above set forth, covenants and agrees with the Lessor to pay, as rent for the same, the sum of One Hundred Dollars (\$100.00) for the said 99 year period, receipt of which sum is acknowledged by Lessor.

And it is further expressly understood and agreed between the parties hereto as follows:

**1. Responsibility For Expenses:** Lessor shall not be liable for any expense incurred by Lessee in preparing the property for planting of crops, weed abatement, for pasturing expenses, and the like

**2. Lessee's Obligations:** Lessee further agrees:

- (a) To irrigate, as possible, and otherwise maintain said premises in a good and husbandlike manner; to keep the fences and improvements thereon in as good condition and repair as the same are now or may be put in by either party hereto, ordinary wear and tear and damage by fire, flood, unavoidable casualty and the elements alone excepted.
- (b) Not to burn any straw or crop residues except as permitted by law;
- (c) Not to cut down any standing live trees (excepting juniper and willow which may be cut and removed) except with Lessor's permission;

To keep all ditches generally clean, open and free from brush and growth, consistent with good husbandry practices;

(e) To maintain, at Lessee's option, such insurance as Lessee shall desire, insuring against loss or damage to his livestock, equipment and feed or hay on said premises

**3. Lessor's Obligations:** The Lessor agrees at all times to keep any improvements and any of Lessor's personal property which may be located on said leased premises insured up to their fair market value against loss or damage;

**4. Right of Access:** Lessor shall be afforded the right of access onto the premises demised pursuant to the within Lease for purposes of inspection of the premises to determine compliance with the terms of the within Lease without notice to Lessee.

**5. No Partnership:** The parties hereto further agree that under no circumstances shall this lease be construed as giving rise to a partnership between them and that neither party shall be liable for the debts or obligations of the other except by written consent.

**6. Right Of Assignment:** The Lessee may assign, transfer, pledge, hypothecate, surrender or dispose of this lease, or any interest herein, sub let, or permit any other person or persons whomsoever to occupy the demised premises.

**7. Liens:** The Lessee will not permit any lien of any kind, type or description to be placed or imposed upon the said leased premises, or any part thereof.

**8. Delivering Up Premises On Termination:** At the expiration of said term or upon any later termination thereof, the Lessee will quit and deliver up said leased premises to the Lessor or those having Lessor's estate in the premises, peaceably, quietly, and in as good order and condition as the same are now in or hereafter may be put in by the Lessor.

**9. Attachment, Bankruptcy or Default:** PROVIDED, ALWAYS, and these presents are upon these conditions, that (1) if the Lessee shall fail or neglect to do, keep, perform or observe any of the

covenants and agreements contained herein or Lessee's part to be done, kept, performed and observed and such default shall continue for thirty days or more after written notice of such failure or neglect shall be given to Lessee, or (2) if the Lessee shall be declared bankrupt or insolvent according to law, or (3) if any assignment of Lessee's property shall be made for the benefit of creditors, or (4) if on the expiration of this lease Lessee fails to surrender possession of said leased premises, then and in either or any of said cases or events, the Lessor or those having Lessor's estate in the premises, may terminate this lease and, lawfully, at his or their option bring action to expel said Lessee and those claiming by, through and under Lessee and remove Lessee's effects without prejudice to any remedy which otherwise might be used for arrears of rent or any preceding breach of covenant.

Neither the termination of this lease by suit nor the taking or recovery of possession of the premises shall deprive either party of any other action, right, or remedy for possession, rent or damages; nor shall any omission by either party to enforce any right or remedy to which that party may be entitled be deemed a waiver of the right to enforce the performance of all terms and conditions of this lease.

In the event of any re-entry by Lessor, Lessor may lease or relet the premises in whole or in part to any tenant or tenants who may be satisfactory to Lessor, for any duration, and for the best rent, terms and conditions as Lessor may reasonably obtain. Lessor shall apply the rent received from any new tenant first to the cost of retaking and reletting the premises, including remedial action required to obtain any new tenant, and then to any arrears of rent and future rent payable under this lease and any other damages to which Lessor may be entitled hereunder.

Any property which Lessee leaves on the premises after abandonment or expiration of the lease, or for more than thirty days after any termination of the lease by Lessor, shall be deemed to have been abandoned, and Lessor may remove and sell said property at public or private sale as Lessor sees fit, and the net proceeds of said sale shall be applied toward the expenses of the Lessor and rent as aforesaid, and the balance of such amounts, if any, shall be held for and paid to the Lessee.

#### **10. Holding Over:**

In the event the Lessee for any reason shall hold over after the expiration of this lease, such holding over shall be deemed to operate as a renewal or extension of this lease for additional one year periods.

### OPTION

11. **Option To Lessee:** At any time while this lease is in full force and effect, except as hereinafter provided, and Lessee is not in default in Lessee's performance hereof, the said Lessor, for value received as set forth hereinabove, hereby gives and grants unto the Lessee the sole, exclusive and irrevocable right and option to purchase the above described premises subject to and upon the terms and conditions set forth herein, at and for a price as follows:

\$250,000.00 (\$ 250,000)

12. **Expiration Of Option:** This option shall be null and void and of no force and effect unless exercised by the Lessee on or before a date which is Ninety Nine (99) years from the effective date hereof at 5:00 p.m. and thereafter the parties shall execute and deliver sale and purchase documents consistent with this agreement.

### 13) **ENCUMBRANCES**

Lessee shall take title to the property subject to: (1) real estate taxes not yet due, and (2) covenants, conditions, restrictions, reservations, rights, rights of way and easements of record.

### 14) **EXAMINATION OF TITLE**

Fifteen days from the date of exercise of the Lease / Option are allowed the Lessee to examine the title to the property and to report in writing any valid objections thereto. Any exceptions to the title which would be disclosed by examination of the records shall be deemed to have been accepted unless reported in writing within such fifteen days. If Lessee, in good faith raises valid objections to any exceptions to the title, Lessor shall use due diligence to remove such exceptions at Lessor's own expense within sixty days thereafter. But if such exceptions cannot be removed within the sixty days allowed, all rights and obligations hereunder may, at the election of the Lessee, terminate and end, unless Lessee elects to purchase the property subject to such exceptions.

### 15) **EVIDENCE OF TITLE**

Evidence of title shall be in the form of a preliminary title report to be obtained at Lessee's option and expense.



**16) LOT LINE ADJUSTMENT**

The parties acknowledge and agree that this instrument was entered into as a result of the denial by the Klamath County Planning Department of a requested lot line adjustment, providing for purchase by the Lessee of the subject property. Lessee agrees that Lessee will continue to endeavor to obtain approval of such a lot line adjustment, the expense of which such lot line adjustment shall be borne by Lessee.

**17) CLOSE OF ESCROW**

Within 30 days from the exercise of the option, or upon removal of any exceptions to the title by the Lessor, as provided above, whichever is later, both parties shall deposit with an authorized escrow agent (AmeriTitle Company) all funds and instruments necessary to complete the sale in accordance with the terms and conditions hereof. Rents, taxes, premiums on insurance if "assumed" by Lessee, interest and other expenses of the property to be prorated as of the date of closing. Closing escrow fees, recording fees and other expenses of closing shall be paid equally by Lessor and Lessee. Contemporaneously with the delivery of Lessor's Deed at closing, the Lessee shall pay the remaining balance of the purchase price in cash.

**18. Title Insurance:** Within ten days from the date of said closing, the Lessor agrees to deliver to the Lessee, at Lessee's expense, a policy of title insurance insuring in the amount of said selling price marketable title to the above described premises in Lessee, subject to building restrictions, zoning ordinances, if any, and any liens or encumbrances against said premises to be paid by Lessor in said sale.

**19. Termination of Option:** Should Lessee fail to exercise the within said option, the foregoing lease shall continue until terminated pursuant to its terms.

**GENERAL PROVISIONS**

**20. Suit Fees:** In the event any suit or action is brought to enforce any provision of this agreement or to repossess said premises, reasonable attorney's fees may be awarded by the trial court to the prevailing party in such suit or action together with costs and necessary disbursements; and on appeal, if any, similar reasonable attorney's fees, costs and disbursements may be awarded the appellate court to the party prevailing on such appeal.

21. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the state of Oregon.

22. **Headings.** The captions and headings used in this Agreement are for reference only and shall not be construed to define or limit the scope or content of this agreement.

23. **Recording.** Upon request of Lessee, Lessor agrees to join in executing a memorandum of this agreement, to be filed for record in the Official Records of Klamath County, Oregon, to give notice to the public of the rights of Lessee under this Agreement. Lessee shall pay the cost of recording the memorandum. Lessee shall join in executing a termination agreement when this agreement has expired or terminated, failing which, Lessor may bring action requesting the Circuit Court to required that Lessee execute the termination agreement.

24. **Entire Agreement.** This agreement contains the final and entire understanding between Lessor and Lessee with respect to its subject matter and is intended to be an integration of all prior negotiations and understandings. Lessor and Lessee shall not be bound by any terms, conditions, statements, warranties, or representations not contained in this Agreement. No change or modification of this agreement shall be valid unless it is in writing and is signed by both Lessor and Lessee.

25. **Real Estate Commission.** Lessor represents that the premises are not now listed for sale with a real estate agent or broker. Lessor and Lessee each agree to pay any commission or finder's fees that may be due on account of this transaction to any broker or finder employed by that party and to indemnify the other against any claims for commissions or fees asserted by any broker claiming by, through, or under the indemnifying party.

26. **Waiver:** Any waiver by the either party of any breach of any covenant herein contained to be kept and performed by the other party shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent that party from declaring the other party to be in default for any succeeding breach, either of the same condition or covenant or otherwise.

27. **Notices:** Any notice required by the terms of this lease to be given by one party hereto to the other or desired so to be given, shall be sufficient if in writing contained in a sealed envelope, deposited in the U. S. Mails, Certified Mail Return

Receipt Requested and First Class Mail, with postage fully prepaid; and if intended for the Lessor herein then if addressed to said Lessor at the address as follows:

CARY ANN T. BAILEY  
1377 LOWER KLAMATH LAKE ROAD  
KLAMATH FALLS, OR 97603

and if intended for the Lessee, then if addressed to the Lessee at the address as follows:

ARTHUR W. DAVINA  
MARY M. DAVINA  
1363 LOWER KLAMATH LAKE ROAD  
KLAMATH FALLS, OR 97603

Any such notice shall be deemed conclusively to have been delivered to the addressee thereof forty-eight hours after the deposit thereof in said U. S. Mail.

**28. Binding On Successors:** The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, and assigns of the parties hereto, and all covenants are to be construed as conditions of this agreement.

**29. Counterparts; Pronouns.** This agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall be effective when one or more counterparts have been signed and delivered by Lessor and Lessee. With respect to any pronouns used herein, each gender used shall include the other gender and the singular and the plural, as the context may require.

**30. Authority to Execute.** Each person executing this agreement on behalf of Lessor and Lessee, respectively, warrants his or her authority to do so.

**31. Statutory Disclaimer.** "THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION 4OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. BEFORE SIGNING OR ACCEPTING

THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OF COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007"

**32. Disclaimer.** "BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007."

**32. Warranties.** Lessor warrants and represents to Lessee that (1) Lessor owns fee title to the Property; (2) Lessor has the authority to execute this agreement, and executing it does not violate any agreement to which Lessor is a party or any covenant by which the property is bound; and (3) Lessor has no knowledge of any condition affecting the property that would materially and adversely affect the ability of Lessee to use the property for agricultural purposes, except as disclosed to Lessee in writing.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands effective the day and year first hereinabove written.

LESSOR:

Cary Ann T. Bailey  
CARY ANN T. BAILEY

LESSEE:

Arthur W. Davina  
ARTHUR W. DAVINA  
Mary M. Davina  
MARY M. DAVINA