

2024-000561

Klamath County, Oregon



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01/22/2024 12:44:02 PM

Fee: \$117.00

AFTER RECORDING, RETURN TO:

Mt. Laki Cemetery
825 Old Midland Road
Klamath Falls, OR 97603

GRANTOR:

John Bonner, Trustee of the
John Bonner Living Trust
5115 Cross Road
Klamath Falls, OR 97603

Great Western Farm and Ranches, LLC
13600 Homedale Road
Klamath Falls, OR 97603

GRANTEE:

Mt. Laki Cemetery
A Cemetery Maintenance District
825 Old Midland Road
Klamath Falls, OR 97603

**GRANT OF EASEMENT AND
IRRIGATION WATER DELIVERY AND
MAINTENANCE AGREEMENT**

DATE: Jan. 19, 2024

(Effective Date)

PARTIES: Great Western Farm and Ranches, LLC
An Oregon Limited Liability Company
13600 Homedale Road
Klamath Falls, OR 97603

("Great Western")

John Bonner, Trustee of the John Bonner Living Trust
5115 Cross Road
Klamath Falls, OR 97603

("Bonner")

Mt. Laki Cemetery
825 Old Midland Road
Klamath Falls, OR 97603

("Mt. Laki")

RECITALS

A. Mt. Laki is the deeded owner of the real property in Klamath County, Oregon, further described as Parcel 3 of Land Partition 2-21 situated in the SE 1/4 of Section 2, Township 40 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, recorded August 20, 2021 in Instrument 2021-012806, Records of Klamath County, Oregon (the "Mt. Laki Property"). Mt. Laki desires to receive irrigation water from an irrigation well (the "Irrigation Well") located on the Great Western Property, delivered through the C-4-C irrigation ditch to a point of diversion located on the Bonner Property. The water will then be withdrawn from the C-4-C irrigation ditch

and transported across the southerly ten feet of the Bonner Property and the Great Western Property to the westerly boundary of the Mt. Laki Property, during drought conditions. The Easement upon the southerly ten feet of the Bonner Property and the Great Western Property is further described on the attached Exhibit "A" and depicted on the map attached as hereto as Exhibit "B."

B. Great Western is the deeded owner of the real property in Klamath County, Oregon, further described as an unsurveyed Parcel 2 of Land Partition 02-21 situated in the SE ¼ of Section 2, Township 40 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, recorded August 20, 2021 in Instrument 2021-012806, Records of Klamath County, Oregon (the "Great Western Property"). There is an Irrigation Well on the Great Western Property, which pumps water into the C-4-C irrigation ditch that flows downstream to the Pump Shed located on the Bonner Property, which is the point of diversion. There is also an irrigation delivery pipe on the southerly boundary of the Bonner Property and the Great Western Property that is capable of transporting irrigation water from the point of diversion to the Mt. Laki Property as further delineated on the attached Exhibit "A" and Exhibit "B."

C. Bonner is the deeded owner of the real property in Klamath County, Oregon, further described as Parcel 1 of Land Partition 02-21 situated in Section 2, Township 40 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, (the "Bonner Property"). The point of diversion from the C-4-C irrigation ditch located on the Bonner Property is through an existing 4' x 6' pump shed (the "Pump Shed") and subsequently through an irrigation delivery pipe located on the southerly boundary of the Bonner Property, as delineated on the attached Exhibit "A" and Exhibit "B."

AGREEMENT

Therefore, for valuable consideration receipt to which is hereby acknowledged and subject to the conditions and the condition set forth herein, the parties agree as follows:

1. Great Western hereby grants and conveys to Mt. Laki an interest in the irrigation water produced by the Irrigation Well on the Great Western Property and shall deliver that water to Mt. Laki by placing that water in the C-4-C irrigation ditch, which will flow downstream to the point of diversion located on the Bonner Property. Great Western will provide water to Mt. Laki so long as the diversion of water does not damage the Great Western Property. The determination of whether such capacity is available shall be made solely by Great Western and Mt. Laki shall have no right to demand delivery of irrigation water.

2. Bonner does hereby grant and convey to Mt. Laki an easement across the southerly 10 feet (10') of the Bonner Property from the existing Pump Shed to the Great Western Property's westerly boundary as further delineated on the attached Exhibit "A."

3. Great Western hereby grants to Mt. Laki an easement across the southerly ten feet (10') of the Great Western Property to the westerly boundary of the Mt. Laki Property as depicted on the attached Exhibit "A" for installation, maintenance, and repair of the water delivery system.

4. It is mutually covenanted and agreed by the parties on behalf of themselves and their respective heirs, successors, and assigns, as follows:

4.1 Mt. Laki shall be solely responsible for maintenance, repair and replacement of the irrigation pipe used to transport water from the point of diversion on the Bonner Property across the Great Western Property to Mt. Laki Cemetery, and shall repair and pay for, at their sole expense, any damage done to the Great Western or Bonner Property in conducting such maintenance, repair, and replacement.

4.2 Bonner shall have no responsibility for the repair, maintenance, and replacement of the water delivery system.

4.3 Great Western shall have no responsibility for the repair, maintenance, and replacement of the water delivery system.

5. Great Western and Mt. Laki's interest in the water from the Irrigation Well is limited. The parties shall cooperate during periods of joint need so that each party's use shall cause a minimum of interruption and interference to the other party. However, in the case of water shortage or conflict, the Great Western right to use and receive water from the Irrigation Well shall be dominant.

6. Bonner and Great Western reserves the right to change the point of diversion and irrigation delivery system and relocate the same at any time and, in such case, shall reconstruct the system in as good or better condition as existed at its prior location. If the point of diversion or irrigation system is relocated, Great Western may record an instrument indicating the relocated point of diversion and irrigation system easement, and such instrument shall serve to amend this easement and eliminate any rights of Mt. Laki in the original easement. Said amendment of the description shall be effective whether or not signed by Mt. Laki, but Mt. Laki shall execute it for such other document necessary to indicate relocation of the easement.

7. **Notice of Maintenance, Repair and Replacement.** If, in the opinion of any party, maintenance and repair of the irrigation system and piping serving Mt. Laki is necessary, written notice shall be provided to the other parties describing the maintenance, repair or replacement to be undertaken and proposed time such repairs will occur. If the parties receiving the written notice do not object, in writing, within fifteen (15) days of receipt of the notice, the repairs and/or replacement shall commence.

8. This easement is appurtenant to and for the benefit of the Bonner Property, Great Western Property, and Mt. Laki Property. This agreement shall be binding upon the parties' heirs, successors, and assigns. The rights herein shall run with the land and be automatically transferred with the sale of a party's real property. Neither this agreement nor any rights, interests, or obligations under this agreement may be assigned by any party without the written consent of the other parties.

9. **Miscellaneous.**

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

9.2 **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.

9.3 **Electronic and Facsimile Signatures.** This Agreement may be executed via electronic or facsimile transmission in accordance with the provisions of the Uniform Electronic Transactions Act ("UETA") as codified in ORS Chapter 84 and of any signed original document, and retransmission of any signed electronic or facsimile transmission (including pdf or any electronic signature complying with the U.S. Federal E-Sign Act of 2000, e.g. www.codesign.com). Such delivery 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.

9.4 **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.

9.5 **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.

9.6 **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.

9.7 **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.

9.8 **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.

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

9.10 **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.

Mt. Laki Cemetery Maintenance District

Frank Anderson

By: Frank Anderson

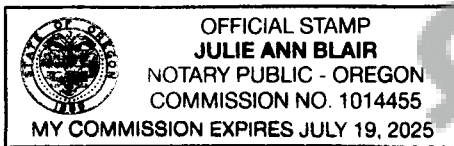
Its: Chairman of the Board of Directors, Grantee

STATE OF OREGON)

) ss

County of Klamath)

Personally appeared before me this 15th day of December, 2023, the above-named Frank Anderson, as Chairman of the Board of Directors, Grantee, and acknowledge the foregoing instrument to be his voluntary act.



Julie Blair
Notary Public for Oregon

My commission expires: 07/19/2025

EXHIBIT "A"

ACCESS EASEMENT

A 10 foot wide strip of land situated in the southwest quarter of the southeast quarter of Section 2, Township 40 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon. Said strip being more particularly described as follows:

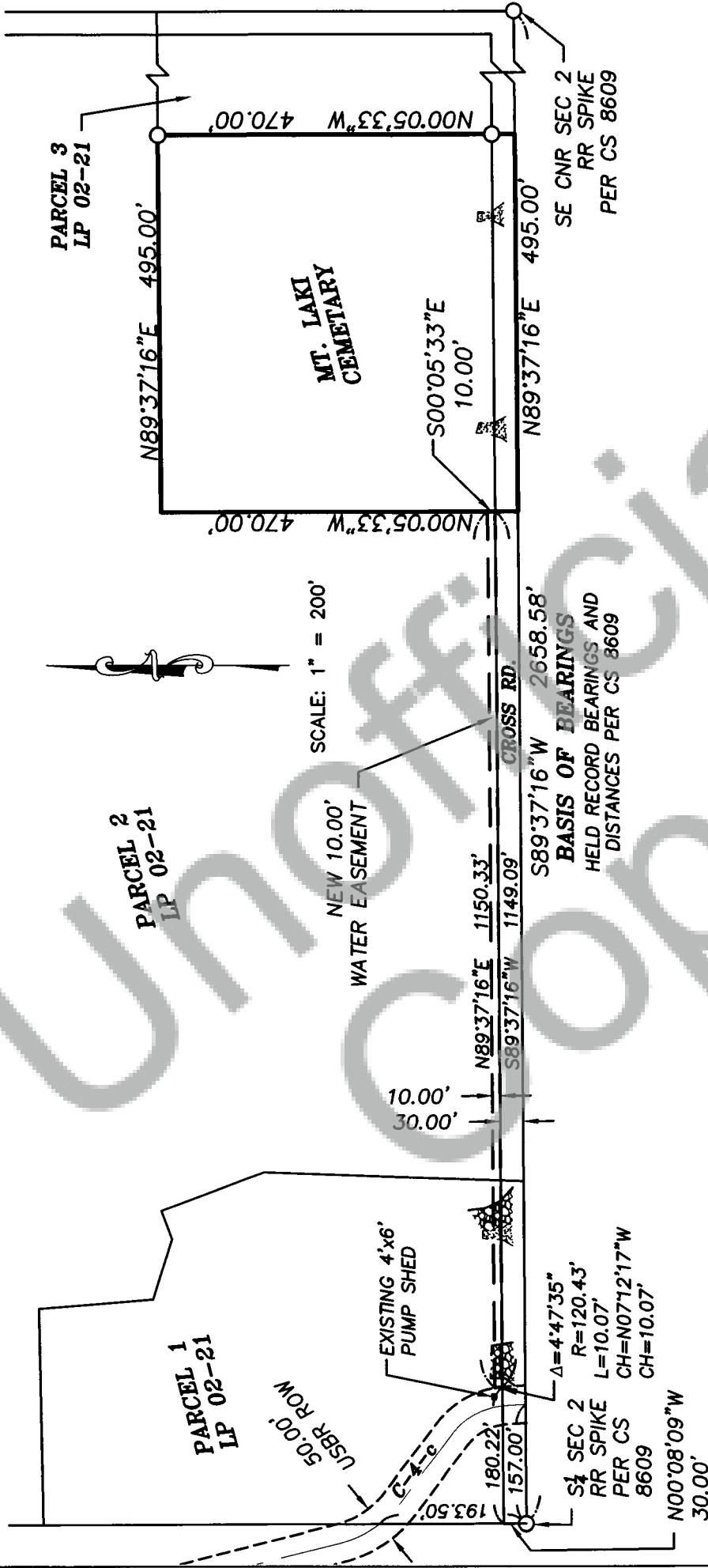
Commencing at the south quarter corner of Section 2, said corner being South 89°37'16" West, 2658.58 feet from the southeast section corner of Section 2; thence North 00°08'09" West, 30.00' to the north right of way of Cross Road; thence North 89°37'16" East, 180.22 feet to the POINT OF BEGINNING, said point being the intersection of the east right of way of the U.S.B.R. C-4-c Lateral and the North right of way of Cross Road; thence along the east right of way of said lateral on a non-tangent, 120.43 foot radius curve to the left through a central angle of 4°47'35" (long chord of which bears North 7°12'17" West, 10.07 feet) with an arc distance of 10.07 feet; thence leaving said lateral right of way, North 89°37'16" East, 1150.33 feet to the west line of Mt. Laki Cemetery; thence along said west line, South 00°05'33" East, 10.00 feet to the North right of way of Cross Road; thence along said north road right of way, South 89°37'16" East, 1149.09 feet to the Point of Beginning.

Basis of Bearing is per the Final Plat of Land Partition 2-21.

Containing 11496 square feet, more or less.

EXHIBIT "B"

LOCATED IN THE SE 1/4 OF SECTION 2, T40S, R09E W.M.
KLAMATH COUNTY, OREGON



LEGEND:

○ FOUND 5/8" ROD WITH
TRU-LINE YPC PER CS 8609,
UNLESS OTHERWISE NOTED

— BOUNDARY LINE

- - - EASEMENT LINE

▨ PAVED DRIVEWAY

▨ GRAVEL DRIVEWAY

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Calvin Owen Baker

OREGON
MARCH 14, 2023
CALVIN OWEN BAKER
95990

RENEWAL DATE: 12-31-25

R-C RHINE-CROSS GROUP LLC

ENGINEERING - SURVEYING - PLANNING
112 N 5th ST - SUITE 200 - P.O. BOX 909
KLAMATH FALLS, OREGON 97601

Phone: (541) 851-9405 Fax: (541) 273-9200 admin@rc-grp.com