Klamath County, Oregon

04/30/2025 11:28:01 AM Fee: \$122.00

AFTER RECORDING, RETURN TO:

Brandsness, Brandsness & Rudd, P.C. Attorneys at Law 411 Pine Street Klamath Falls, OR 97601

GRANTOR:

David R. McLin and Debbie A. McLin, Trustees of the McLin Family Trust 21330 Hwy 140 E Dairy, OR 97625

GRANTEES:

Tyler T. Martinez and Patricia L. Martinez 19995 Callahan Rd Red Bluff, CA 96080

CONSIDERATION: \$0.00

GRANT OF EASEMENT AND WELL MAINTENANCE AGREEMENT

- A. David R. McLin and Debbie A. McLin, Trustees of the McLin Family Trust ("McLin"), Grantor, is the owner of real property in Klamath County, Oregon, as described on Exhibit A, attached hereto and incorporated herein ("McLin Property").
- B. Tyler T. Martinez and Patricia L. Martinez, as tenants by the entirety ("Martinez"), Grantees, are the owners of approximately 50 acres of property in Klamath County, Oregon, as described on Exhibit B, attached hereto and incorporated herein ("Martinez Property").
- C. There is an agricultural irrigation source well, piping, well pump, booster pump, and manifold (collectively, "Well") on the southeasterly portion of the McLin Property. A description of the property and location of the Well are further delineated on Exhibit C, attached hereto and incorporated herein. The Well provides water to the McLin and Martinez Properties for agricultural irrigation water. The Well produces an average of 2,400 gallons per minutes (GPM).
- D. There is a transmission line for the delivery of agricultural irrigation water to the Martinez Property that runs along the old Odem county road, which was vacated in the 1960s, and runs generally northwesterly from the Well to the Martinez Property.
- E. McLin desires to grant Martinez a 16% ownership in the Well and water produced thereby to use exclusively for the irrigation of agricultural crops on the Martinez Property.

1. GRANT OF EASEMENT AND WELL MAINTENANCE AGREEMENT

WHEREFORE, for valuable consideration, receipt of which is hereby acknowledged and subject to the conditions set forth in this instrument, the parties agree, as follows:

- 1. Grant of Easement from McLin to Martinez. McLin hereby grants to Martinez a perpetual, nonexclusive easement and right of way from the Well head to the Martinez Property for the sole purpose of laying, constructing, repairing, replacing and maintaining the agricultural irrigation water system on the McLin Property and transport said agricultural irrigation water through a transmission line to irrigate the Martinez Property. The exact location of the easement and rights of way shall be as they exist on the current vacated Odem county road.
- 2. **Repair and Maintenance of Well**. During the growing season, McLin shall be responsible for 84% and Martinez shall be responsible for 16% of the cost for any repairs, replacement, and improvements to the irrigation source well, piping, well pump, booster pump, and manifold, including electricity costs, which serves both properties. Each party shall be responsible for the cost, repair, maintenance, and replacement of any transmission lines from the Well to each party's individual property.

Should either party desire to access the irrigation water offseason while the other party is idle, the accessing party shall be solely responsible for such costs associated with the use, maintenance, and repair of the Well and all electricity costs associated with said use.

- 3. **Notice of Repair, Maintenance, or Replacement**. If, in the opinion of either party, repair and/or replacement of the well casing, well pump, booster pump, wellhead, downhole piping, manifold, and/or shared transmission line is necessary, written notice shall be provided to the other party, in writing, describing the maintenance, repair or replacement to be undertaken and the cost thereof, if known. If the party receiving the notice does not object, in writing, within twenty (20) days of receipt of the notice, then the cost of said repair and/or replacement shall be divided equally between the parties.
- 4. **Opt Out**. Either party, their heirs, successors, and assigns, may opt out of this Agreement and disconnect from their portion of the Well and system and be relieved of any liability provided and such parties' proportionate costs have been paid to date. A physical disconnection must be made and proof of such disconnection provided to the other party. The cost of disconnecting from the Well shall be at the withdrawing party's sole expense, and a release shall be recorded in the real property records for Klamath County. No reconnection will be made except as provided herein.
- 5. **Fulfillment of Party's Obligations.** In the event, either party fails to fulfill their obligations under this Agreement, the other party may perform on behalf of the defaulting party ("Defaulting Party") and, to the extent that one or more of the Defaulting Party fails to make such party's pro rata contribution, the other party ("Advancing Party") may advance funds for the account of the Defaulting Party, and any funds so advanced will be a debt of the Defaulting Party due to the Advancing Party and will bear interest at the legal rate of nine percent (9%) per annum and will be immediately due and payable to the Advancing Party, with interest, without further demand or notice. The Advancing
- 2. GRANT OF EASEMENT AND WELL MAINTENANCE AGREEMENT

Party may, on not less than twenty (20) days prior written notice, bring legal action for collection, together with reasonable costs, disbursements and attorney's fees.

- 6. **Rights to Run with the Land.** The rights hereunder shall run with the land and will automatically transfer with the sale of either party's real property. Neither this Agreement or any rights, interests, or obligations under this Agreement, may be assigned by any party without the written consent of the other party. No further extension of rights to access or use of the irrigation water and transmission lines shall be made without the express written consent of the other party.
- 7. **Notices**. Notices and other communications under this Agreement must be in writing and will be deemed to have been delivered personally, sent via certified mail, or delivered by overnight delivery service to the other party at the following addresses:

Grantor:

David R. McLin and Debbie A. McLin, Trustees of the McLin Family Trust 21330 Hwy 140 E Dairy, OR 97625 Grantees:

Tyler T. Martinez and Patricia L. Martinez 19995 Callahan Rd Red Bluff, CA 96080

8. Miscellaneous Provisions

- 8.1 <u>Amendment</u>. This Agreement may be amended only by an instrument in writing executed by all the parties.
- 8.2 <u>Counterparts</u>. 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.
- 8.3 <u>Electronic and Facsimile Signatures</u>. 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.docusign.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.
- 8.4 <u>Further Assurances</u>. 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.

- 8.5 <u>Waiver</u>. 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.
- 8.6 <u>Governing Law</u>. 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.
- 8.7 <u>Attorney Fees</u>. 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.
- 8.8 <u>Injunctive and Other Equitable Relief.</u> 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.
- 8.9 <u>Exhibits</u>. The exhibits referenced in this Agreement are part of this Agreement as if fully set forth in this Agreement.
- 8.10 <u>Severability</u>. 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.
- 8.11 <u>Assignment</u>. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned by any party without the prior written consent of the other parties, which consent will not be unreasonably withheld.
- 8.12 <u>No Third-Party Beneficiaries</u>. Nothing in this Agreement, express or implied, is intended or will be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.
- 8.13 <u>Venue</u>. Except as otherwise provided herein, any action or proceeding seeking to enforce any provision of this Agreement or based on any right arising out of this Agreement must be brought against any of the parties in Klamath County Circuit Court of the State of Oregon, or subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.
- 4. GRANT OF EASEMENT AND WELL MAINTENANCE AGREEMENT

- 8.14 <u>Construction</u>. The captions used in this Agreement are provided for convenience only and will not affect the meaning or interpretation of any provision of this Agreement. All references in this Agreement to "Section" or "Sections" without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Whenever the words include or including are used in this Agreement, they will be deemed to be followed by the words without limitation.
- 8.15 Memorandum/Recording. This Grant of Easement and Well Maintenance Agreement shall be recorded in the real property records of Klamath County at the shared cost of all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first herein written.

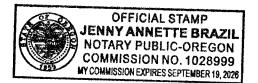
David R. McLin, Trustee of the McLin Family Trust dated June 30, 2008, Grantor Debbie A. McLin, Trustee of the McLin Family Trust dated June 30, 2008, Grantor

STATE OF OREGON)

) ss.

County of Klamath

Personally appeared before me this day of da



Notary Public for Oregon
My Commission expires: 9 (9/2026

***Grantees' signatures and notarial certificate are on following page ***

Tyler T. Martinez, Grantor	Patricia L. Martinez, Grantor
STATE OF OREGON)	ı
) ss.	
County of Klamath)	
Personally appeared before me this day of, 2025, the above-named Tyler T. Martinez and Patricia L. Martinez, Grantees, and acknowledged the foregoing instrument to be their voluntary act.	
OFFICIAL STAMP JENNY ANNETTE BRAZIL NOTARY PUBLIC-OREGON COMMISSION NO. 1028999 MY COMMISSION EXPIRES SEPTEMBER 19, 2028	Notary Public for Oregon My Commission expires: 9/19/2026

Exhibit A

McLin Property

An area of land in Section 32, Township 38 South, Range 11.5 East, and the North 1/2 of Section 5, Township 39 South, Range 11.5 East, Willamette Meridian. Being a portion of Parcel 2 of Land Partition 24-08 and being more particularly described as follows:

Parcel 2 of Land Partition 24-08, excepting therefrom the following:

The portion of Parcel 2 of Land Partition 24-08 lying within Section 31 and being more particularly described as follows:

Beginning at a 5/8" iron rod marking the East 1/4 corner of Section 31 which bears South 00°30'08" East 627.71 feet along the East line of Section 31 from a 5/8" iron rod on the North right-of-way of the O.C. & E. Railroad right-of-way; thence along said East line South 00°30'08" West 1303.98 feet to the South 1/16 corner common to Sections 31 and 32; thence North 89°23'45" West 1324.66 feet to the SE 1/16 corner of Section 31; thence along the 1/16 Section line North 00°31'29" East 1821.16 feet to a point on the Southerly right-of-way of the O.C. & E. Railroad; thence along said South right-of-way South 89°51'30" East 1323.97 feet to the intersection with the East line of Section 31; thence along said East line South 00°30'08" West a distance of 527.71 feet to the point of beginning.

The basis of bearings for this description is the East line of Section 31 per C.S. 4365.

Exhibit B

Martinez Property

An area of land in the North 1/2 of Section 6, Township 39 South, and Section 31, Township 38 South, Range 11.5 East, Willamette Meridian. Being more particularly described as follows:

The land described in Klamath County Deed Document No. 2016-007022 together with the following:

The portion of Parcel 2 of Land Partition 24-08 lying within Section 31 and being more particularly described as follows:

Beginning at a 5/8" iron rod marking the East 1/4 corner of Section 31 which bears South 00°30'08" East 627.71 feet along the East line of Section 31 from a 5/8" iron rod on the North right-of-way of the O.C. & E. Railroad right-of-way; thence along said East line South 00°30'08" West 1303.98 feet to the South 1/16 corner common to Sections 31 and 32; thence North 89°23'45" West 1324.66 feet to the SE 1/16 corner of Section 31; thence along the 1/16 Section line North 00°31'29" East 1821.16 feet to a point on the Southerly right-of-way of the O.C. & E. Railroad; thence along said South right-of-way South 89°51'30" East 1323.97 feet to the intersection with the East line of Section 31; thence along said East line South 00°30'08" West a distance of 527.71 feet to the point of beginning.

The basis of bearings for this description is the East line of Section 31 per C.S. 4365.

