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\*\*\* THIS DOCUMENT IS BEING  
RECORDED TO ADD A  
LEGAL DESCRIPTION. \*\*\*

Vol. 797 Page 37602

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## DEVELOPMENT AGREEMENT

This Agreement is made by and between the Klamath Irrigation District, herein referred to as "KID," and Dan and Connie J. Duncan herein called "Landowner."

## RECITALS:

1. KID is a municipal corporation operating pursuant to ORS Chapter 545 and the rules, regulations and Bylaws of the District. KID, pursuant to contracts made by and between KID and the United States of America, Department of Interior, Bureau of Reclamation ("BOR"), operates and maintains an irrigation and drainage system owned by the BOR and which provides agricultural irrigation water and removes agricultural drainage water from in excess 75,000 acres of agricultural land in Klamath County, Oregon. The system is known as the "Klamath Project."

2. Landowner owns agricultural land located in the Klamath Project and which is served by KID. Said land is described on Exhibit A attached hereto. Landowner desires to develop and improve his land or a portion thereof for non-agricultural land uses.

3. The development of land within the area served by KID can cause significant adverse impacts on the operation and maintenance of the Klamath Project system. Said impacts include, but are not limited to:

- a. An increase in the quantity and rate of non-agricultural drainage water entering the agricultural system which is not designed to accept said water. A decrease in quality of non-agricultural drainage water that commonly contains non-agriculture chemicals and debris.
- b. Complaints about the normal and necessary KID maintenance operations which may cause noise, dust and other impacts considered by non-agricultural land uses to be a nuisance.
- c. Complaints by non-agricultural users about the plants and grasses located on canal and drain right-of-ways which are considered by agricultural users to be pasture and wildlife habitat and which are considered by non-agricultural users to be weeds and a fire hazard.

The Klamath Project and some of the conflicts and impacts between non-agricultural land users and Klamath Project maintenance and operations are described in detail in the Final Order and Opinion of the Land Conservation and Development Service in case No. 78-026 and in the 1 - C Drainage System Intergovernmental Cooperation Agreement made by and between KID and the Klamath County Drainage Service District, which said Order and Agreement are incorporated herein by this reference.

4. KID has objected to the approval and issuance of Orders and permits required by applicable land use laws, ordinances and rules for non-agricultural uses when in its judgment the non-agricultural uses would have a significant adverse impact on the operations of KID and the operation and maintenance of the Klamath Project. KID believes that the non-agricultural use requested by landowner will have such a significant adverse impact and is prepared to oppose landowner's land use application.

5. Landowner has offered to enter into this Agreement if KID will agree to withdraw its opposition to landowner's request. Landowner's offer is hereby accepted by KID.

DEVELOPMENT AGREEMENT

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## AGREEMENT

Now therefore, in consideration of the premises and of the Agreements herein contained, KID and Landowner mutually agree as follows:

A. The foregoing explanatory Recitals are an integral part of this Agreement and constitute a part of the consideration for this Agreement. The Recitals shall be considered in construing the agreements and provisions set forth in this Agreement.

B. This Agreement shall be perpetual and Landowner's warranties, covenants and agreement shall run with and bind the real property described on Exhibit A and each and every part thereof and all of Landowner's successors and assigns.

C. Landowner covenants and agrees as follows:

(1) Landowner shall design and construct a drainage system which shall prevent any drainage water that arises on or comes onto Landowner's Land, (the "Land") from entering or endangering any ditch, canal or other facility operated or maintained by KID. No construction or alteration shall take place on the "Land" until the design of the drainage system has been reviewed and approved by KID which shall occur in a timely manner. KID's approval of the design shall not be unreasonably withheld. The drainage system shall be constructed as designed. The drainage system shall be modified by Landowner from time to time as reasonably necessary if it fails to prevent drainage from entering or endangering such structures and facilities. Landowner shall maintain the drainage system in good operating condition at all times.

(2) Landowner shall not place anything in, on or around any such facility or structure without KID's prior written approval. Landowner acknowledges that any alteration, addition or construction on BOR right of ways requires prior approval and a permit from BOR. Landowner acknowledges that KID will not approve any alteration, addition or construction which may impede the flow of water in any canal or drain, or which may limit or interfere with KID's operation and maintenance of any such structure or facility.

(3) Landowner shall grant to KID, at no cost to KID, such additional right of way and unimpeded access reasonably required by KID to operate and maintain the system.

(4) KID shall continue to deliver irrigation water to the existing turnout or delivery point. In the event the Land is divided into separate ownerships, Landowner shall provide, operate and maintain an irrigation system designed to deliver an adequate supply of water to the land legally entitled to receive it. The design of said system shall be subject to prior review and approval by KID. Each such parcel of the Land will be jointly liable for the payment of all charges and assessments made against the Land by KID. The Land shall not be segregated into parcels by KID for assessment and collection purposes. Landowner shall provide a homeowner's association or other entity which shall be responsible for the payment of all such charges. In the event the charges or a portion thereof are not paid, KID shall be entitled to perfect its statutory collection lien against all of the Land currently charged or assessed by KID. Landowner shall designate (and may change from time to time) one person who shall have the authority and responsibility to order water on and off and KID shall take such orders only from said designated person.

(5) Landowner does hereby recognize, ratify, grant and confirm the existence of all existing rights of KID or the United States affecting Landowner's said property, including, without limitation by this recital, all rights of way, easements and servitudes for all irrigation and drainage facilities of the United States or KID as now constructed

and located upon or affecting Landowner's said property and do agree that KID and the United States each now own, have and hold a prescriptive right, right of way, easement and servitude for all percolation, seepage, leakage, overflow, flooding or any failure or lack of drainage which now exists or which at any time may hereafter occur or result from any irrigation or drainage facility now constructed or in existence on or near any part of the Land, Landowner shall not take or allow any action which interferes with or impedes KID's operation and maintenance of the system.

(6) Landowner does hereby absolve, waive and release both KID and the United States from any and all claims of liability for any damages or injuries to person or property which may have heretofore occurred or which may hereafter in connection with the ownership, operation or maintenance of the system. Said waiver shall include, without limiting the breadth thereof, claims of negligence, nuisance and trespass from seepage, high groundwater, weeds, pests, smoke, dust, noise, odors and arising from the standard operations and maintenance of the system, and for damages arising from injuries and loss of life of animals and people occurring on the right of way, structures and facilities.

D. KID covenants and agrees:

(1) To the extent it is legally able to do so, it will continue to operate and maintain the system and to deliver irrigation water to the Land.

(2) It will not oppose or it shall withdraw its opposition to Landowner's Land use applications.

E. The parties mutually agree:

(1) That they will act in good faith in performing this Agreement.

(2) In the event of a default by a party, the other party shall give not less than 10 days written notice specifying the default to the defaulting party. If the defaulting party fails to cure the default, then the other party may cure the default and charge the defaulting party for the reasonable cost thereof. Each party shall have all rights and remedies at law and equity including action for damages, suit for specific performance and KID charges for curing a default, may be collected in the manner provided in ORS 545.482 to 545.508.

This Agreement shall take effect when signed by Landowner and upon the approval of same by the Board of Directors of KID.

WITNESS their hands this 22<sup>nd</sup> day of September, 1997.

Don W. Duncan  
LANDOWNERS

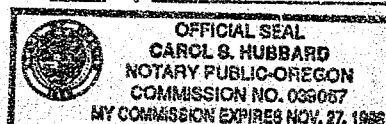
Cornie J. Duncan  
LANDOWNERS

STATE OF OREGON )

) ss

County of Klamath )

The foregoing instrument was acknowledged before this 22<sup>nd</sup> day of September, 1997, by Don W. and Cornie J. Duncan



Carol S. Hubbard  
Notary Public for Oregon  
My commission expires: 11-27-98

DEVELOPMENT AGREEMENT

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APPROVED:

Klamath Irrigation District

by: Mike McKen  
Board President Vice.

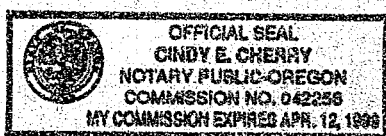
By: David A. Soler  
Manager

STATE OF OREGON

County of Klamath

)  
) ss

The foregoing instrument was acknowledged before this 23<sup>rd</sup> day of October, 1997, by Mike McKen + David A. Soler



Cindy E. Cherry  
Notary Public for Oregon  
My commission expires: 4/12/99

After recording return to:  
Klamath Irrigation District  
6640 K.I.D. Lane  
Klamath Falls, OR 97603

DEVELOPMENT AGREEMENT



338

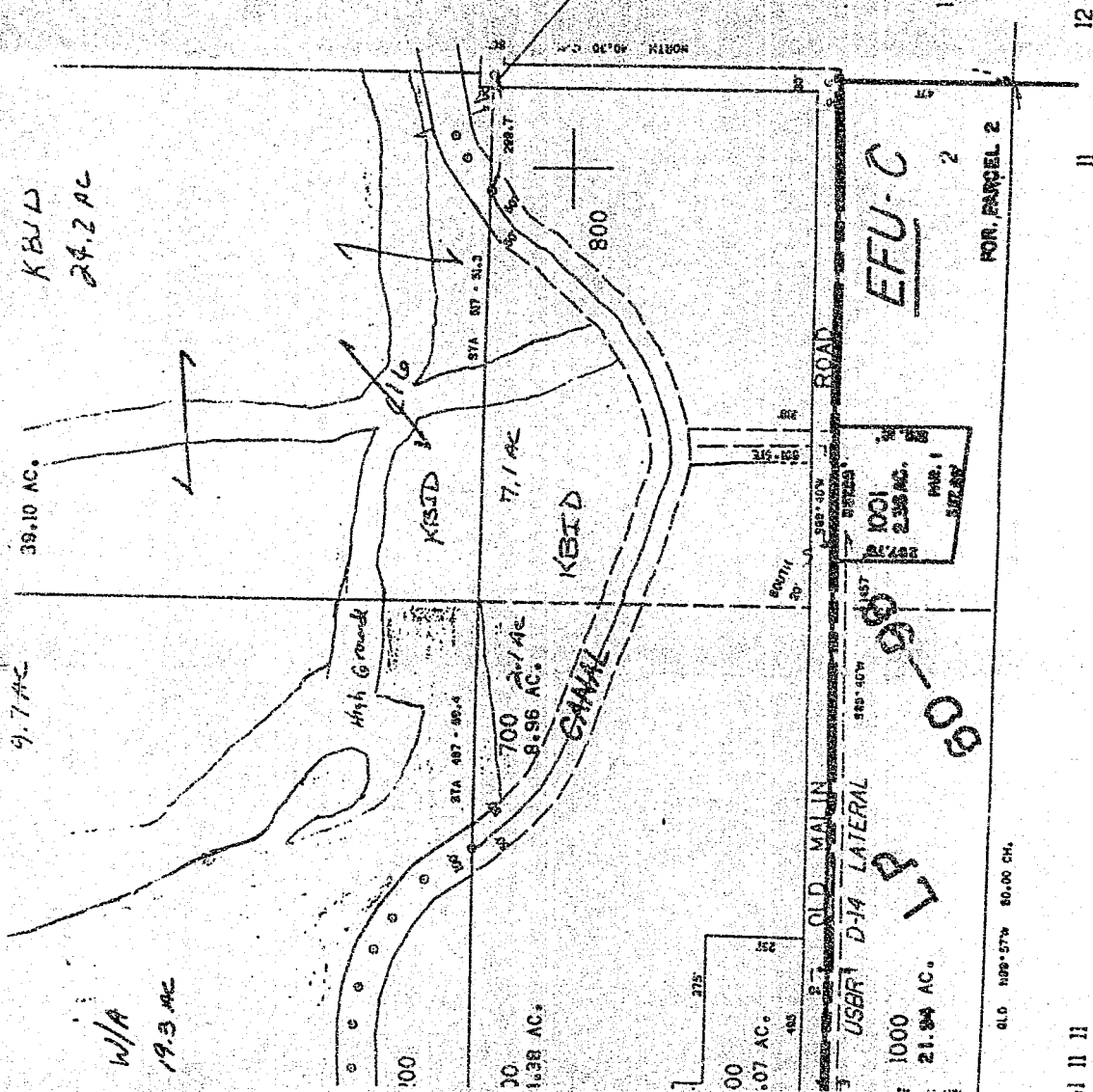
## LEGAL DESCRIPTION

State of Oregon, County of  
Klamath. Portion of the NE 1/4 of  
the SE 1/4 lying South of the USRR  
Canal, TWP 41S, RNGE 11E,  
Section 2.

37666

2553

4-1-02



STATE OF OREGON: COUNTY OF KLAMATH: SS

Filed for record at \_\_\_\_\_  
of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ A. M., and duly recorded in Vol. \_\_\_\_\_  
\_\_\_\_\_ on Page 37602

FEE \$30.00

By Bernetha G. Letsch, County Clerk  
Kathleen R. Roe

STATE OF OREGON: COUNTY OF KLAMATH: SS.

Filed for record at request of Klamath Irrigation District the 27th day  
of January A.D., 19 98 at 1:30 o'clock P. M., and duly recorded in Vol. M98  
of Deeds on Page 2549

FEE \$25.00

By Bernetha G. Letsch, County Clerk