

O-KLA-98-10

Contract No. 8-07-20-L6973

K-20-167

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Klamath Project

EASEMENT FOR ROADWAY ACCESS
C-4-K LATERAL

THIS INDENTURE, made this 8th day of June, 1998, in accordance with the Act of Congress approved Jun 17, 1902, (32 Stat. 388) and acts amendatory thereof and supplementary thereto, all such acts being commonly known and referred to as the Federal Reclamation Laws, by and between the UNITED STATES OF AMERICA, acting by and through its Department of the Interior, Bureau of Reclamation, hereinafter called the "United States," represented by the officer executing this instrument on its behalf, and Miller Hill West Homeowners Association, tenants in common, hereinafter called "Grantee."

RECITALS

The United States has constructed and the Klamath Irrigation District is operating, as a feature of the Klamath Project, the C-4-K Lateral in Klamath County, Oregon; and

The Grantee proposes to cross the right-of-way of the C-4-K Lateral with a culvert and crossing for access three parcels of property; and

No other safe and practical access is available to the Grantee; and

The United States has, at this time, no objection to such use and has determined that granting of such an easement will not be incompatible with the purpose for which said parcel was acquired and is being administered, nor will the easement interfere with the operation of the C-4-K Lateral.

EASEMENT

In consideration of the premises and subject to the terms and conditions hereinafter set forth, the parties hereto agree:

1. The United States hereby grants to Grantee, without warranty of title, a nonexclusive right, privilege, and easement to occupy a portion of the C-4-K Lateral right-of-way with construction and maintenance of a culvert and crossing for access located on a portion of United States acquired land described in the legal description and shown on the attached map marked Exhibit "A" and made a part hereof.

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2. Upon execution of this instrument Grantee shall pay to the United States a fee of \$500.00, said sum reflects the fair market value for the easement area. In addition, the Grantee will reimburse the United States for all administrative costs.

3. Grantee hereby agrees to indemnify and hold harmless the United States, its agents, and employees, from any loss or damage, and from any liability on account of personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of Grantees' activities under this easement.

4. The waiver of a breach of any of the provisions hereof shall not be deemed to be a waiver of a subsequent breach of the same provision or of any other provision hereof.

5. This easement is granted for and limited to the specific purposes set forth in Article 1 hereof, and the issuance of this instrument shall not constitute nor be construed as a surrender of subordination to Grantee of the jurisdiction or supervision of the United States in the land herein described.

6. The terms and provisions of this agreement shall inure to the benefit of and be binding upon the successors and assigns of the Grantee.

7. If Grantee ceases to use the easement for an access road for a period of 5 years, such easement shall terminate and the Grantee may be required, at the discretion of the United States, to restore the land to its original condition. Said restoration shall be at the expense of the Grantee.

8. The following Hazardous Materials provisions are applicable to this easement:

(a) *The grantee shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and instructions, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored or disposed of on or in lands, waters or facilities owned by the United States or administered by Reclamation.*

(b) *"Hazardous material" means any substance, pollutant or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., and the regulations promulgated pursuant to that Act.*

(c) *The grantee may not allow contamination of lands, waters or facilities owned by the United States or administered by Reclamation by hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, pesticides (including, but not limited to, the misuse of pesticides), pesticide containers or any other pollutants.*

(d) *The grantee shall report to Reclamation, within 24 hours of its occurrence, any event which may or does result in pollution or contamination adversely affecting lands, water or facilities owned by the United States or administered by Reclamation.*

(e) *Violation of any of the provisions of this Article shall constitute grounds for immediate termination of this contract and shall make the grantee liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.*

(f) The grantee agrees to include the provision contained in paragraphs (a) through (e) of this Article in any subcontract or third party contract it may enter into pursuant to this contract.

(g) Reclamation agrees to provide information necessary for the grantee using reasonable diligence, to comply with the provision of this Article.

9. Construction and Maintenance:

(a) All construction, reconstruction, or maintenance work shall conform to normal acceptable engineering standards, be in accordance with all applicable Federal, State, and local laws, rules, and regulations, and shall be done in such manner as to not interfere with those rights and privileges of the United States, together with the responsibility for any damage to United States facilities and/or loss of use as a result of damages to the facilities.

(b) Any culvert to be placed in the C-4-K Lateral will be placed on grade and properly sized by the Grantee with the approval of Klamath Irrigation District. The size of the culvert placed in this crossing has been determined to be 24 inches. Future maintenance will be the responsibility of the Grantee. If in the future it becomes necessary to enlarge the C-4-K Lateral, the Grantee agrees to remove or modify facilities constructed under this easement at the Grantee's expense.

10. Failure of the Grantee to comply with any of the conditions and requirements of this easement shall warrant termination of the easement.

11. The Grantee warrants that no person or agency has been employed or retained to solicit or secure this conveyance upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this conveyance without liability or in its discretion to require Grantee to pay full amount of such commission, percentage, brokerage or contingent fee to the United States.

12. No member of or delegate to Congress or resident Commissioner shall be admitted to any share or part of this conveyance or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this conveyance if given to a corporation or company for its general benefit.

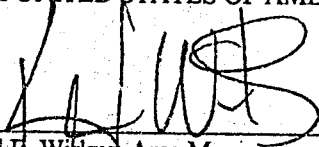
13. There is reserved from the rights herein granted, the prior rights of the United States acting through the Bureau of Reclamation, Department of the Interior, to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severance or other damage to the Grantee's work; provided, however, that if such reserved rights are not identified in at least general terms in this easement and exercised for works authorized by the Congress within 10 years following the date of this easement, they will not be exercised unless the Grantee, or Grantee's successor in interest is notified of the need, and grants an extension or waiver. If no extension or waiver is granted, the United States will compensate, or institute mitigation measures for any resultant damages to works placed on said lands pursuant to the rights

20924

herein granted. Compensation shall be in the amount of the cost for reconstruction of Grantee's works to accommodate the exercise of the United State's reserved rights. As alternatives to such compensation, the United States, at its option and at its own expense, may mitigate the damages by reconstructing the Grantee's works to accommodate the United States facilities, or may provide other adequate mitigation measures for any damage to the Grantee's property or right. The decision to compensate or mitigate is that of the appropriate Regional Director.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

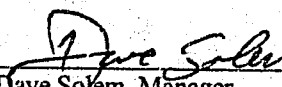
THE UNITED STATES OF AMERICA

By 
Karl E. Wirkus, Area Manager
Klamath Basin Area Office

By 
Miller Hill West Homeowners Association (Grantee)

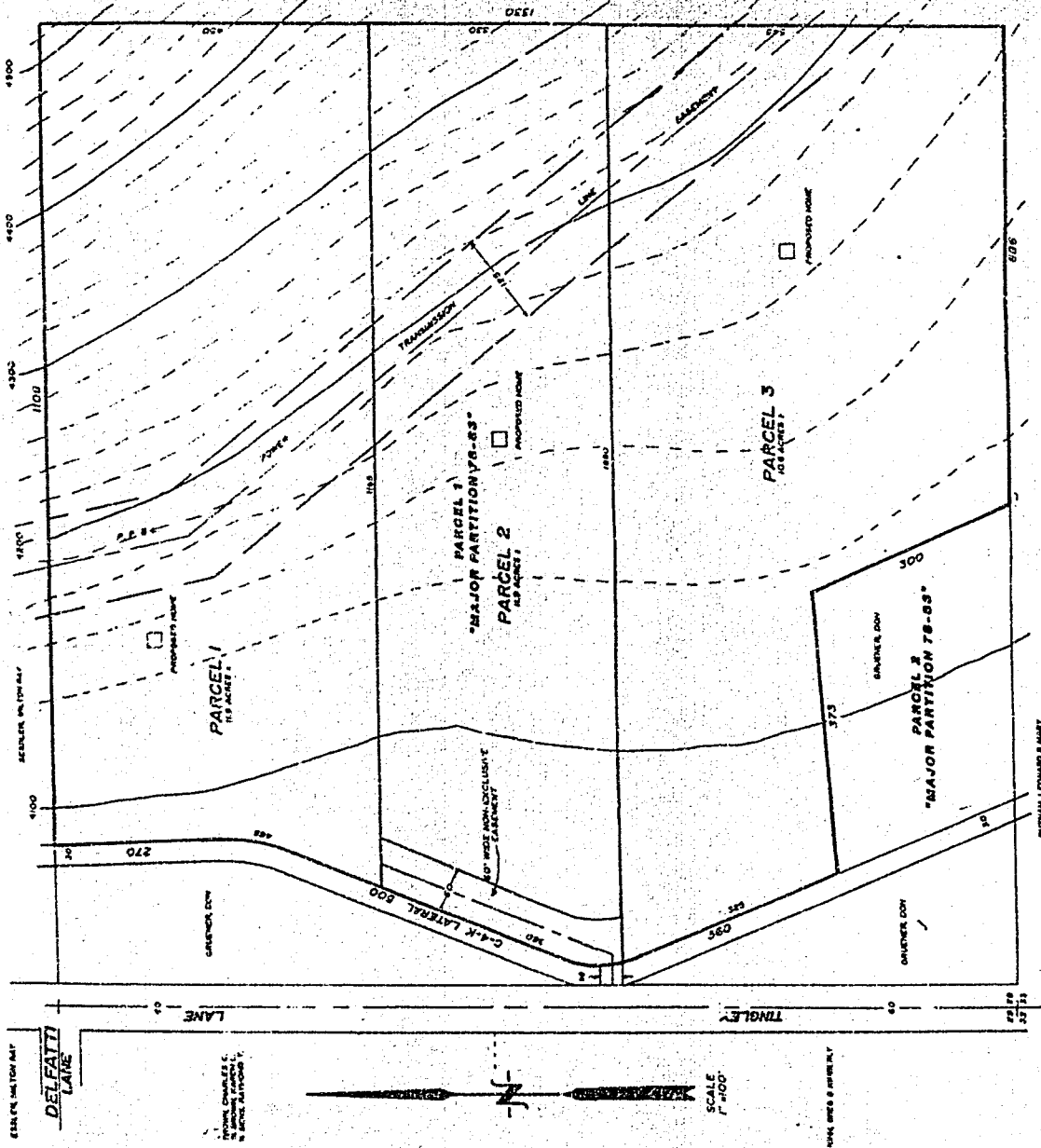
NOTED:

KLAMATH IRRIGATION DISTRICT

By 
Dave Solem, Manager
Klamath Irrigation District

By 5-17-98

LAND PARTITION 52-96
 BEING PARCEL 1 OF "MAJOR PARTITION 78-83" SITUATED
 IN THE SW1/4 SW1/4 SECTION 20, T39S, R9EWM,
 KLAMATH COUNTY, OREGON
 JULY 1996



STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Tru-Line the 18th day
 of June A.D., 19 98 at 10:28 o'clock A. M., and duly recorded in Vol. M98
 of Deeds on Page 20921

FEE \$30.00
 2.50 copies
 Return: Tru-Line Surveying
 2333 Summers Lane
 Klamath Falls, OR97603
 By Kathleen G. Letsch, County Clerk