

After recording return to:  
Klamath Irrigation District  
6640 KID Lane  
Klamath Falls, OR 97603

'02 MAY 16 PM2:34

Vol M02 Page 29279  
State of Oregon, County of Klamath  
Recorded 05/16/2002 2:34 p.m.  
Vol M02, Pg 29279.85  
Linda Smith, County Clerk  
Fee \$ 51.00 # of Pgs 7

Irrigation Contract for Change or Alteration  
EASEMENT AGREEMENT

This Easement Agreement is made by and between the Klamath Irrigation District, an Oregon municipal corporation, operating under Oregon Revised Statutes Chapter 545, herein called "KID"; Robert K. Henderson and Gloria Henderson, husband and wife, herein called "Hendersons"; Lloyd W. Reed and Virginia M. Reed, Trustees of the Lloyd and Virginia Reed Living Trusts, herein called "Reeds"; and Gene Flory, Trustee of the Gene and Jacqueline Flory Living Trust, herein called "Flory."

RECITALS:

1. Flory holds legal title to that portion of Government Lot 10, Section 17, Township 40 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, lying easterly of the United States Bureau of Reclamation "G" Canal right-of-way, and westerly of the Great Northern and Santa Fe Railroad right-of-way in said Government Lot 10.
2. Hendersons are the contract purchasers of the land described in recital 1, above, and also to other land to which Flory holds title. A Memorandum of Contract of Sale between Flory and Hendersons is recorded in Volume M99 at Page 51323 and is further referred to in the Assignment of Vendors' Interest and Deed recorded in Volume M01 at Page 6422 of the Deed Records of Klamath County, Oregon.
3. Reeds own that portion of said Government Lot 10 lying easterly of the Great Northern and Santa Fe Railroad right-of-way and westerly of Hill Road, a county road, located in said Section 17. Reeds also own that portion of Government Lot 3, Section 8, Township 40 South, Range 10 East of the Willamette Meridian, lying between the "G" Canal and Hill Road.
4. Pursuant to an Amendatory Contract with the United States Department of Interior Bureau of Reclamation, KID operates and maintains said "G" Canal.
5. Currently, KID accesses the "G" Canal for purposes of operation and maintenance along a road that includes a crossing of the railroad right-of-way. In addition, Hendersons also access their property by crossing the railroad right-of-way.
6. Burlington Northern and Santa Fe Railroad has agreed to install, at its cost, a bridge across the "G" Canal for the purpose of providing access to the Hendersons' property located west of the "G" Canal. In consideration for the construction of said bridge, Hendersons, Flory, and KID must release any rights they may have for use of the crossing of the railroad right-of-way, and the railroad will remove the crossing, thereby making it impossible for any of the parties to cross the railroad at the existing crossing.
7. Hendersons have requested that KID consent to the removal of the railroad right-of-

way crossing. KID is willing to grant said consent in consideration for the provision by the other parties of a non-exclusive easement across the southerly 20 feet of Government Lot 10 on the existing easement from Hill Road to the railroad right-of-way, a new easement, also 20 feet in width, across Government Lot 10 from the railroad right-of-way to the "G" Canal and for the use of the bridge that the railroad will construct across the "G" Canal westerly from the terminus of the easement created hereby. In addition, KID desires a formal easement across the road located adjacent to the north boundary of said Government Lot 3, Section 8.

Now, therefore, the parties agree as follows:

A. The Reeds do hereby grant to KID, an easement for ingress and egress on and across the existing road described in that certain grant of right-of-way recorded in Volume M78 at Page 23738 of the Deed Records of Klamath County, Oregon from Hill Road to the right-of-way of the Burlington Northern and Santa Fe Railroad, along the southerly 20 feet of said Government Lot 10. In addition, Reeds do hereby grant to KID an easement for ingress and egress on and across the existing road located along the northerly 20 feet of Government Lot 3, Section 8, Township 40 South, Range 10 East of the Willamette Meridian from Hill Road to the easterly right-of-way line of the "G" Canal.

B. Hendersons and Flory do hereby grant to KID an easement and right-of-way for ingress and egress over a strip of land 20 feet wide located on Government Lot 10, as shown on the diagram attached hereto as Exhibit "A." The beginning point of said easement is the point where the Burlington Northern and Santa Fe Railroad right-of-way crosses said southerly boundary of Government Lot 10 and the ending point is the easterly boundary of the "G" Canal right-of-way. Hendersons and Flory do further grant an easement to KID to cross the bridge, which will extend westerly from the terminus of this easement, across the "G" Canal.

C. The easements granted hereby are granted for ingress and egress by KID, its employees, and contractors, for the purpose of accessing both banks of the "G" Canal and the area within the "G" Canal right-of-way, for the operation, maintenance, and improvement of the "G" Canal. The parties acknowledge that routinely in its operation and maintenance activities, ditch riders employed by KID access the "G" Canal and proceed along the banks of the "G" Canal in motorized vehicles on a daily basis for the purpose of monitoring the canal, the structures appurtenant thereto, and the flow of water through the canal. In addition, from time to time, KID uses heavy equipment, including dump trucks, excavators, backhoes, and caterpillar tractors to clean, improve, and maintain the canal and the structures located thereon. The easements granted hereby include the use of the easements described above for these purposes.

D. KID acknowledges that the right-of-way and easements will also be used by the Hendersons for access to their residence and for use in Hendersons' normal farming activities, including the movement of farm equipment. Therefore, no party to this Agreement shall block easements so as to prevent the use of the easements by the other parties. Use of the easements shall be on a regular, continuous, nonexclusive, nonpriority basis benefitting the parties, their

successors, assigns, lessees, mortgagees, invitees, guests, agents, and employees. However, no party's rights hereunder shall lapse in the event of that party's failure to use the easements on a continuous basis.

E. It is the Hendersons' intent to improve the right-of-way to provide a road for access to the Hendersons' property. The construction and improvements to the road will be made by the Hendersons at their sole cost and expense and no other party shall have any responsibility to contribute to the cost of improving the said road.

F. As of the execution of this Agreement, Hendersons are using a foot bridge across the "G" Canal to gain access to their land. Hendersons agree to promptly remove the foot bridge following construction of the new bridge by the railroad.

G. In the event that KID causes damage to the road or to the bridge that will be constructed on the easements, wear and tear from its operation and maintenance activity excepted, then KID shall repair the road and bridge and return them to the condition they were in prior to such damage.

H. KID shall have the right to continue to use its current means of access until such time as the new access described above, including the bridge across the "G" Canal, has been constructed and are available for use by KID.

I. Except for the repair of the road and bridge described above, KID shall have no responsibility for the maintenance of the roads and the new bridge. All such maintenance, to the extent required by Hendersons, shall be performed by Hendersons. Provided, however, that upon request by Hendersons, and the execution by them of KID's standard private work agreement, KID will, at Hendersons' expense, replace deck boards and provide other bridge maintenance at KID's cost of materials and established labor and equipment rates. Notwithstanding the foregoing provision, if Hendersons elect to not maintain the right-of-way, then at KID's option, it may improve the road surface to the extent reasonably necessary to allow safe ingress and egress by KID for the purposes described above.

J. KID shall continuously maintain general liability insurance coverage in amounts consistent with its potential liability under the Oregon Tort Actions Against Public Bodies Act, ORS 30.260-30.300, covering negligence and other tort claims that may arise from KID's use of the said easements.

K. In the event any party shall fail to perform its obligations under this Agreement, the other party(s) shall be entitled to require such performance by suit for specific performance or, where appropriate, through injunctive relief. Such remedies shall be in addition to any other remedies afforded under Oregon law.

L. The easements granted hereunder shall run with the land as to all property burdened

and benefitted by such easements. The rights, covenants, and obligations contained in this Agreement shall bind, burden, and benefit each party's successors, assigns, lessees, and mortgagees.

## KLAMATH IRRIGATION DISTRICT

By: David Cacka  
David Cacka, President

By: David A. Solem  
David A. Solem, Secretary

Robert K. Henderson  
Robert K. Henderson

Gloria Henderson  
Gloria Henderson

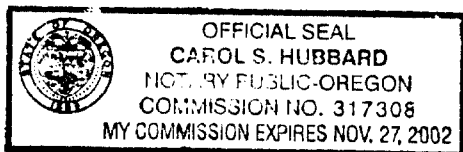
Lloyd W. Reed, Trustee  
Lloyd W. Reed, Trustee of the Lloyd and  
and Virginia Reed Living Trust

Virginia M. Reed, Trustee  
Virginia M. Reed, Trustee of the Lloyd and  
and Virginia Reed Living Trust

Gene Flory, Trustee  
Gene Flory, Trustee of the Gene and  
Jacqueline Flory Living Trust

STATE OF OREGON, County of Klamath) ss.

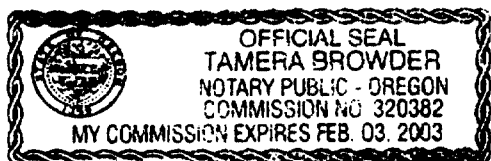
This instrument was acknowledged before me on April 5, 2002 by David Cacka, as President, and David A. Solem, as Secretary, of the Klamath Irrigation District.



Carol S. Hubbard  
Notary Public for Oregon  
My Commission Expires: 11-27-02

STATE OF OREGON, County of Klamath) ss.

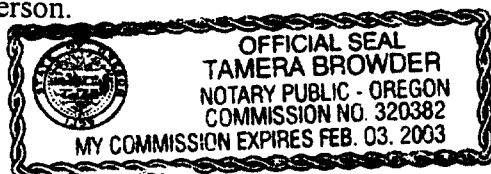
This instrument was acknowledged before me on 3/21, 2002 by Robert K. Henderson.



Tamera Browder  
Notary Public for Oregon  
My Commission Expires: 2/3/03

STATE OF OREGON, County of Klamath) ss.

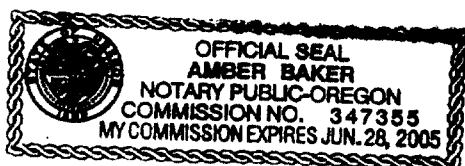
This instrument was acknowledged before me on 3/21, 2002 by Gloria Henderson.



Tamera Browder  
Notary Public for Oregon  
My Commission Expires: 2/3/03

STATE OF OREGON, County of Klamath) ss.

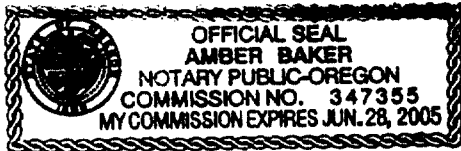
This instrument was acknowledged before me on 3/29, 2002 by Lloyd W. Reed, as Trustee of the Lloyd and Virginia Reed Living Trust.



Amber Baker  
Notary Public for Oregon  
My Commission Expires: 6/28/05

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on 3/29, 2002 by Virginia M. Reed, as Trustee of the Lloyd and Virginia Reed Living Trust.



Amber Baker  
Notary Public for Oregon  
My Commission Expires: 6/28/05

STATE OF Oregon, County of Jackson) ss.

This instrument was acknowledged before me on April 3, 2002 by Gene Flory, as Trustee of the Gene Flory and Jacqueline Flory Living Trust.



Patricia Ann Meierhoff  
Notary Public for  
My Commission Expires: July 27, 2004

SECTION 17 T.40S. R.10E. W.M.  
KLAMATH COUNTY

Ex. A

29285

1"=400'

SEE MAP 40 10 08

