

AFTER RECORDING, RETURN TO:

Klamath County Drainage Service District
c/o Reginald R. Davis
305 Main Street
Klamath Falls OR 97601

State of Oregon, County of Klamath
Recorded 06/03/2004 8:17 A m
Vol M04 Pg 35559-64
Linda Smith, County Clerk
Fee \$ MC # of Pgs 6

DRAINAGE SERVICE AGREEMENT

THIS AGREEMENT is made as of the 28th day of May, 2004, by and between Enterprise Irrigation District, a municipal corporation, herein called "EID"; Stephen J. Keller and Rebecca A. Hoppe, herein referred to as "Developer"; and the Klamath County Drainage Service District, herein referred to as "KCDSO."

RECITALS:

A. Developer owns the real property described on Exhibit "A" attached hereto and incorporated herein (the "Property").

B. The Property is currently in agricultural use. Developer intends to subdivide the Property and develop single-family residences thereon.

C. The Property is located within the boundaries of EID and within the boundaries of KCDSO. Developer currently pays annual charges to EID for farm land irrigation and to KCDSO for drainage services.

D. EID and KCDSO are parties to a Drainage System Intergovernmental Cooperation Agreement (the "ICA") dated July 1, 1992.

E. EID owns and maintains an open drainage ditch (the "Ditch"), which crosses the Property from Onyx Avenue on its north to Harlan Drive on its south, parallel to La Marada Way. As part of its development plan, Developer desires that the Ditch be converted to a buried pipeline. Further, as part of the requirements for developing the Property, Developer must provide and maintain a surface drainage system, which meets the standards of Klamath County's Land Development Code.

F. It is the Developer's desire that EID take responsibility for the construction, operation, and maintenance of the drainage system and for the replacement of the open drain ditch with a buried pipeline. Further, it is the Developer's desire that KCDSO accept drainage from Developer's land into KCDSO's system. EID is willing to construct, operate, and maintain the drainage system, and KCDSO is willing to accept the drain water into its system on the terms and conditions set forth below.

AGREEMENT

The parties mutually and severally covenant and agree as follows:

1. Developer agrees to provide to EID and KCDS, at Developer's cost, an engineered Drainage System Plan, which shall provide for the conversion of the open drain described above to a 36-inch buried pipe, the provision of one or more catch basins designed to accept all surface drainage from all impervious surfaces developed on the Property, and which provides a system for the controlled release of water from the catch basins into the 1-C-A-C-3 Drain. Said Plan shall be subject to the review and approval of EID and KCDS.
2. Developer shall also provide, at its cost, the said 36-inch drain pipe and all other pipe and water control structures required to construct the drainage system pursuant to said Plan. Developer shall also provide fill dirt on the site to be used by EID in burying the said 36-inch pipe. It is the parties' intent that Developer will stock pile the fill dirt on the Property as Developer excavates roads and other improvements on the Property. If there is insufficient fill dirt generated by said improvements, it shall be the sole responsibility of Developer to provide additional fill dirt delivered to the Property at Developer's cost.
3. EID agrees, upon notice from Developer that the materials described above are available on the Property, within a reasonable time thereafter, to replace the open drain with the buried mainline and to construct the catch basins and install all water control equipment and other improvements included in the Plan in a good, workmanlike manner and to the specifications of the Plan. EID agrees that it shall provide all necessary equipment and labor to accomplish the construction of the system. Provided, however, that the parties acknowledge that it is Developer's intent to develop the Property in phases, and that the development of the drainage system will also occur in phases, as reasonably necessary to comply with the requirements of approval of Developer's Subdivision Plat(s) for the Property.
4. EID also agrees to operate and maintain the drainage system in good operating order in conformance with the ICA and any amendments thereto. Provided, however, that if it becomes necessary to modify or improve the system to meet the drainage requirements resulting from the development of the Property, Developer shall be solely responsible for the cost of such improvements.
5. Developer agrees that for so long as the Property or portions thereof remain in agricultural use, the Property shall be liable for EID's annual charges for irrigation with respect to the undeveloped portion of the Property.
6. As each subdivision plat is filed, EID shall suspend all further EID charges against the land included in the plat. Upon request from EID, Developer shall, without any cost to Developer, exclude the land included in the plat from EID by executing EID's standard Exclusion Agreement.

7. The parties acknowledge that the drainage system will be engineered to accept surface drainage water from Developer's land based on the maximum amount of water released from a "25-year flood event." In the event of damages resulting from flooding from an event that is of a magnitude greater than a 25-year event, the costs of abating the damage and making any necessary repairs to that portion of the system on the Property shall be charged to the Property and shall be paid within 30 days after billing of such charges by KCDS.

8. The Property owner shall be solely responsible for the quality of water entering the drainage system. The Property owner shall not allow any hazardous materials or substances, as those terms are used in Oregon law, to enter the drainage system. In the event that EID or KCDS incur any cost or liability as a result of hazardous substances or materials entering the drainage system from the Property, the Property owner shall indemnify and hold EID and KCDS harmless from all such liability including, but not limited to, costs of removing or otherwise abating the presence of hazardous substances and materials in the system. All such costs incurred by EID shall be deemed charges subject to the collection procedure set forth in ORS 545.482 to 545.508.

9. As Developer converts the Property or a portion of the Property from agricultural use to residential or other uses, upon request from the District, Developer shall release all water rights of the Property removed from agricultural use to the District.

10. KCDS agrees to accept the discharge of drain water from the Property and the Ditch into the 1-C drainage system, which is operated and maintained by KCDS under an Agreement with the United States, Department of Interior, Bureau of Reclamation. KCDS's Agreement to accept the drainage water into its system, however, is limited to controlled amounts that can be discharged from the drainage system on the Property into the drainage system operated and maintained by KCDS under the drainage plan approved by KCDS.

11. In the event that a party to this Agreement or their successors in interest institute a suit, action, or arbitration to interpret or enforce the terms of this Agreement, then the prevailing party in such suit, action, or arbitration shall be entitled to an award of its reasonable attorney's fees incurred in prosecuting such suit, action, or arbitration in an amount determined by the court arbitrator, and including attorney's fees and costs incurred on any appeal.

12. In addition to the other consideration payable or to be provided by Developer described herein above, Developer shall provide to EID such easements and rights of way as may be reasonably required by EID for the construction, operation, and maintenance of the drainage system. To the extent the location and scope of said easements have been determined as of the date each Final Subdivision Plat for the Property is filed by Developer, said Final Subdivision Plat shall show the location of each such easement. Provided, however, that the absence of any such easement on the Final Subdivision Plat shall not limit the easements actually granted and conveyed to EID, nor shall it limit EID's right to request the conveyance of additional easements, as are reasonably necessary to construct, operate, and maintain the drainage system.

13. The covenants, restrictions, and agreements contained herein shall be deemed to be, and are, covenants, restrictions, and agreements that will run with the Property and each subdivision parcel or lot thereof. Each, covenant, restriction, and agreement shall bind the parties, their successors, and assigns. Each parties' obligations for performance of this Agreement shall pass to their respective successors in interest, and a party's personal liability for the performance of its obligations shall end upon the transfer of its interest to its successor.

14. This Agreement may only be modified in writing, and no modification shall be effective until approved at a duly-conducted public meeting by the authorized Directors of EID and KCDS.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first herein set forth above.

ENTERPRISE IRRIGATION DISTRICT, "EID"

By: Bill Essig
Its President

Stephen J. Keller
Stephen J. Keller, "Developer"

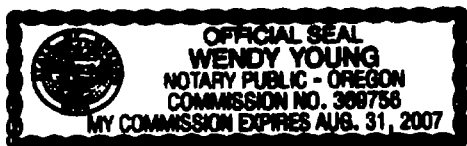
Rebecca A. Hoppe
Rebecca A. Hoppe, "Developer"

KLAMATH COUNTY DRAINAGE
SERVICE DISTRICT, "KCDS"

By: [Signature]
Its Board Chairperson June 2, 2004

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on May 26, 2004 by
Bill Essig as President of the Enterprise Irrigation District Board of
Directors.



Wendy Young
Notary Public for Oregon
My Commission Expires: 8-31-2007

STATE OF OREGON, County of Klamath) ss.

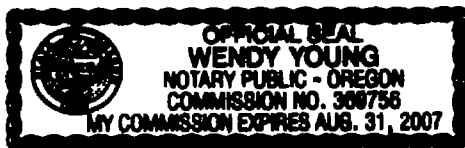
This instrument was acknowledged before me on May 25, 2004 by Stephen J. Keller.



Wendy Young
Notary Public for Oregon
My Commission Expires: 8-31-2007

STATE OF OREGON, County of Klamath) ss.

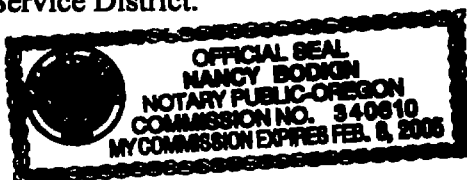
This instrument was acknowledged before me on May 25, 2004 by Rebecca A. Hoppe.



Wendy Young
Notary Public for Oregon
My Commission Expires: 8-31-2007

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on June 2, 2004 by John Elliott as Board Chairperson of the Klamath County Drainage Service District.



Nancy Bodin
Notary Public for Oregon
My Commission Expires: Feb 8, 2005

OWNERS

DENNIS ENSOR O.L.S., C.W.R.E.
SANDIE ENSOR

TRU SURVEYING, INC. LINE

2333 SUMMERS LANE
KLAMATH FALLS, OREGON 97603
PHONE: (541) 884-3691

35564

JOHN HEATON L.S. 17

SEPTEMBER 4, 2003

LEGAL DESCRIPTION

A TRACT OF LAND SITUATED IN SECTION 12, T39S, R9EWM, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE SOUTHWEST CORNER OF "TRACT 1108 - SEVENTH ADDITION TO SUNSET VILLAGE", THENCE ALONG THE BOUNDARY OF SAID "TRACT 1108"; N68°57'47"W 72.76 FEET, WEST 180.07 FEET, N01°54'33"W 15.01 FEET, AND WEST 15.00 FEET TO THE NORTHWEST CORNER OF "TRACT 1112 - EIGHTH ADDITION TO SUNSET VILLAGE"; THENCE, ALONG THE EASTERLY BOUNDARY OF SAID "TRACT 1112", S01° 54'33"E 85.05 FEET, SOUTH 517.88 FEET AND ON THE ARC OF A CURVE TO THE RIGHT (RADIUS EQUALS 1465.00 FEET AND CENTRAL ANGLE EQUALS 32° 59'43") 843.66 FEET TO A POINT ON THE BOUNDARY OF "TRACT 1127 - NINTH ADDITION TO SUNSET VILLAGE"; THENCE ALONG THE BOUNDARY OF SAID "TRACT 1127", S57° 00'17"E 140.00 FEET, S66° 20'43"E 60.78 FEET, S57° 20'39"E 110.00 FEET, ON THE ARC OF A CURVE TO THE LEFT (RADIUS POINT BEARS N57° 20'39"W 1775.00 FEET AND CENTRAL ANGLE EQUALS 00°21'00") 10.84 FEET, S57°41'39"E 110.00 FEET, S66°21'22"E 60.67 FEET, S57°57'48"E 115.00 FEET, S62°51'31"E 114.01 FEET AND EAST 547.00 FEET TO A POINT ON THE BOUNDARY OF "TRACT 1194 - TENTH ADDITION TO SUNSET VILLAGE"; THENCE ALONG THE BOUNDARY OF SAID "TRACT 1194", NORTH 350.00 FEET, EAST 105.00 FEET, NORTH 46.00 FEET, EAST 339.61 FEET, NORTH 17.43 FEET, EAST 170.00 FEET, SOUTH 12.00 FEET AND EAST 115.71 FEET TO A POINT ON THE EAST LINE OF THE W1/2 E1/2 NW1/4 SE1/4 OF SAID SECTION 12; THENCE N00°12'55"E, ALONG SAID EAST LINE, 1115.81 FEET TO THE C-E-W-E 1/256 CORNER OF SAID SECTION 12; THENCE N89°52'00"E, ALONG THE EAST-WEST CENTER SECTION LINE OF SAID SECTION 12, 195.59 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE "OREGON STATE PARKS BIKE PATH"; THENCE N66°40'40"W, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, 782.37 FEET TO A POINT ON THE BOUNDARY OF "TRACT 1341 - ELEVENTH ADDITION TO SUNSET VILLAGE - PHASE 1"; THENCE, ALONG THE BOUNDARY OF SAID "TRACT 1341". S23°19'20"W 170.00 FEET, N66°40'40"W 24.84 FEET, S23°19'20"W 110.00 FEET, N66°40'40"W 252.80 FEET, WEST 454.85 FEET AND N66°38'00"W 65.77 FEET TO THE POINT OF BEGINNING, CONTAINING 59.1 ACRES, MORE OR LESS.



Dennis A. Ensor
DENNIS A. ENSOR O.L.S. 2442

EXPIRES 12-31-03

EXHIBIT "A"