

State of Oregon, County of Klamath  
Recorded 01/19/05 9:51a m  
Vol M05 Pg 03865-72  
Linda Smith, County Clerk  
Fee \$ 56.00 # of Pgs 8

AFTER RECORDING RETURN TO:

Enterprise Irrigation District  
3939 South Sixth Street #325  
Klamath Falls OR 97603

'05 JAN 19 AM9:51

DRAINAGE SERVICE AGREEMENT  
MEADOWS EAST  
PARAMOUNT  
WOODWORTH PARK

THIS AGREEMENT is made as of the 10<sup>th</sup> day of September, 2004, by and between Enterprise Irrigation District, a municipal corporation, herein called "EID"; JK Squared, LLC, Five Development, LLC, and Dan Martin Construction, Inc, herein referred to as "Developers"; and the Klamath County Drainage Service District, herein referred to as "KCDSO."

RECITALS:

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

B. The Property is currently in agricultural use. Developers 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. Developers currently pay 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 Hilyard Avenue on its north to the Rails to Trails Bike Path on its south. As part of its development plan, Developers desire that a retention pond system be installed. Further, as part of the requirements for developing the Property, Developers must provide and maintain a surface drainage system, which meets the standards of Klamath County's Land Development Code.

F. It is the Developers' desire that EID take responsibility for the construction, operation, and maintenance of the retention system. Further, it is the Developers' desire that KCDSO accept drainage from Developers' land into KCDSO's system. EID is willing to

DRAINAGE SERVICE AGREEMENT

1

56- net o/c Monte Robinson

construct, operate, and maintain the retention 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. All parties agree that Developers will share the cost of this development proportionally to their share of the total acreage. The cost of the retention pond construction and engineering will not exceed \$25000.00 without written consent from above parties.
2. Developers agree to provide to EID and KCDSO, at Developers' cost, an engineered Drainage System Plan, which shall provide for the conversion of the open drain described above to a detention pond, 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 KCDSO.
3. Developers shall also provide, at their cost, all pipe and water control structures required to connect to the drainage system pursuant to said Plan. Developers shall also provide fill dirt on the site to be used by EID to construct said retention system. It is the parties' intent that Developers will stock pile the fill dirt on the Property as Developers excavate roads and other improvements on the Property. If there is insufficient fill dirt generated by said improvements, it shall be the sole responsibility of Developers to provide additional fill dirt delivered to the Property at Developers' cost.
4. EID agrees, upon notice from Developers that the materials described above are available on the Property, within a reasonable time thereafter, to install a detention pond and to 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 Developers' 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.
5. EID also agrees to operate and maintain the drainage system in good operating order in conformance with, and subject to the continued existence of, 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, Developers shall be solely responsible for the cost of such improvements.

6. Developers agree 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.

7. As each subdivision plat is filed, EID shall suspend all further EID irrigation and drainage operation and maintenance charges against the land included in the plat. Upon request from EID, Developers shall exclude the land included in the plat from EID by executing EID's standard Exclusion Agreement.

8. The parties acknowledge that the drainage system will be engineered to accept surface drainage water from Developers' 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. 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. 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.

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

11. 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.

12. 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 the costs incurred on any appeal.

13. In addition to the other consideration payable or to be provided by developer described herein above, Developers 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 Developers, 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 reasonable necessary to construct, operate, and maintain the drainage system.

14. 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.

15. 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

JK SQUARED, LLC, "DEVELOPER"

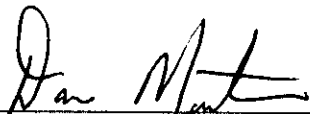
By: [Signature]  
Member-Manager

03869


FIVE DEVELOPMENT, LLC, "DEVELOPER"

By:   
Member-Manager

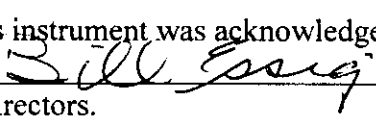
DAN MARTIN CONSTRUCTION, INC,  
"DEVELOPER"

By:   
Its President

KLAMATH COUNTY DRAINAGE SERVICE  
SERVICE DISTRICT, "KCDSC"

By:   
Its Board Chairperson

STATE OF OREGON, County of Klamath) ss.

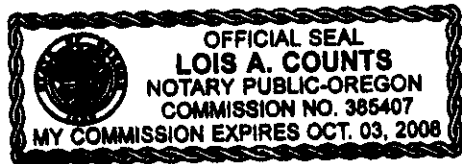
This instrument was acknowledged before me on Jan 5, 2004, by  
 as President of the Enterprise Irrigation District  
Board of Directors.



  
Notary Public for Oregon  
My Commission Expires: 8.18.06

STATE OF OREGON, County of Klamath) ss.

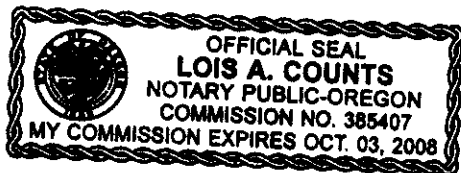
This instrument was acknowledged before me on 12/29, 2004, by  
Jeffrey K. McCollum as Member-Manager of JK Squared, LLC.



Lois A. Counts  
 Notary Public for Oregon  
 My Commission Expires: 10-03-08

STATE OF OREGON, County of Klamath) ss.

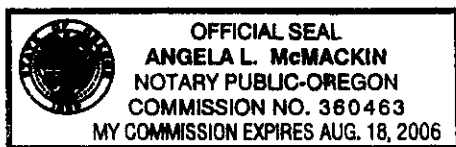
This instrument was acknowledged before me on 12/30, 2004, by  
JAMES SERVOS as Member-Manager of Five Development, LLC.



Lois A. Counts  
 Notary Public for Oregon  
 My Commission Expires: 10-03-08

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on JAN 5, 2004, by  
Dan Martin as President of Dan Martin Construction, Inc.

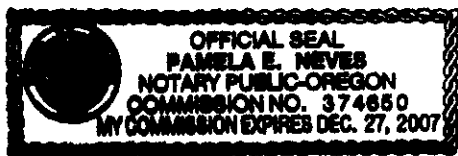


Angela L. McMackin  
 Notary Public for Oregon  
 My Commission Expires: 8-18-06

03871

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on January 11, 2005, by [Signature] as Board Chairperson of the Klamath County Drainage Service District.



[Signature]  
Notary Public for Oregon

My Commission Expires: 12/27/07

