

mtc-72960R

AFTER RECORDING RETURN TO:

IFA Nurseries, Inc.
136 N.E. Territorial Road
Canby, OR 97013

M05-72156

Klamath County, Oregon
12/30/2005 03:28:40 PM
Pages 4 Fee: \$36.00

GRANTOR:

City of Klamath Falls
500 Klamath Avenue
Klamath Falls, OR 97601

GRANTEE:

IFA Nurseries, Inc.
136 N.E. Territorial Road
Canby, OR 97013

TAX STATEMENTS:

Until requested otherwise,
send all tax statements to:
IFA Nurseries, Inc.
136 N.E. Territorial Road, Canby, OR 97013

BARGAIN AND SALE DEED

[Statutory]

The City of Klamath Falls, a Municipal Corporation of the State of Oregon, Grantor, conveys to IFA Nurseries, Inc., Grantee, the following described real property situated in the County of Klamath, State of Oregon, to-wit:

Parcel 2 of Land Partition 53-05, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon (said parcel being located in the southwest $\frac{1}{4}$ of Section 33, Range 9EWM, Klamath County, Oregon);

RESERVING UNTO GRANTOR A SANITARY SEWER EASEMENT ON THE TERMS AND CONDITIONS SET FORTH IN ATTACHED EXHIBIT A.

Grantor and Grantee hereby acknowledge that Grantor is the owner and holder of "Permit to Appropriate Public Waters" from the Oregon Water Resources Department (Permit G-15533), hereinafter "Permit." The Permit authorizes Grantor to use groundwater from a well located on a parcel of property generally south of the Property for industrial and agricultural nursery purposes. The Permit specifically references the Property as a "place of use" for nursery purposes. Grantor and Grantee intend to enter into a separate use/maintenance agreement to allow Grantee's continued use of irrigation water under the Permit. GRANTOR DOES HEREBY RESERVE UNTO GRANTEE ALL OF ITS RIGHT, TITLE AND INTEREST IN THE PERMIT (G-15533), INCLUDING, WITHOUT LIMITATION, ALL ASPECTS OF THE PERMIT APPLICABLE TO, IN ANY WAY RELATED TO, THE PROPERTY.

The true and actual consideration paid for such transfer, stated in terms of dollars is \$100,000.00.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED

36.00

USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

DATED this 30th day of December, 2005.

City of Klamath Falls - Grantor

By: 
Jeffrey D. Ball, City Manager

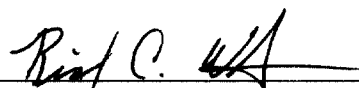
ATTEST:

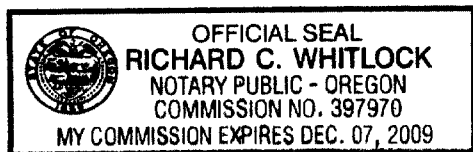

Shirley Kappas, Deputy City Recorder

STATE OF OREGON)
)ss.
County of Klamath)

On the 30th day of December, 2005, personally appeared Jeffrey D. Ball and Shirley Kappas, who, each being first duly sworn, did say that the former is the City Manager and the latter is the Deputy City Recorder of the City of Klamath Falls, an Oregon municipal corporation, and each did acknowledge that the instrument was signed on behalf of said municipal corporation and is its voluntary act and deed.

BEFORE ME:


Notary Public for Oregon
My Commission Expires: 12/7/09



SANITARY SEWER EASEMENT

Exhibit A

As part of the foregoing property conveyance, there is hereby reserved unto Deed Grantor, **City of Klamath Falls, Oregon, a Municipal Corporation** (referred to in this Easement as "City"), a perpetual, exclusive sanitary sewer line easement situated on the Property legally described in the foregoing Deed. The Sanitary Sewer Easement consists of a strip of land sixteen feet (16') wide, more particularly described and depicted in the final plat of Land Partition 53-05, recorded in the office of the Klamath County Surveyor on December 6, 2005, and incorporated herein by this reference (hereinafter, the "Easement Area").

The terms of this Easement are as follows:

1. The Property as described in the foregoing Deed is burdened by this Easement.
2. This Easement shall be used for the purpose of installing, inspecting, repairing, maintaining, altering and operating City's municipal sanitary sewer lines and all necessary appurtenances in, into, upon, over, across, and under the Easement Area, together with the right of reasonable ingress and egress over the Property for purposes of City's use of this Easement.
3. Except as provided in paragraph #4 herein, Deed Grantee, IFA Nurseries, Inc. (referred to in this Easement as "IFA") shall not erect any buildings or other permanent structures within the Easement Area that would inhibit access or cause damage to any utility lines within the Easement Area. IFA shall have the right to utilize the Easement Area for asphalt driveways, parking area(s) and/or landscaping, except for trees or other vegetation that in City's judgment would interfere with the sewer line(s). Portland cement concrete is prohibited in the Easement Area except for curbs and gutters. IFA agrees that any other use by IFA of the Easement Area or the ingress/egress area permitted herein shall not interfere with City's use and enjoyment of those areas as authorized herein.
4. IFA has previously leased the Property from City for the purpose of constructing and operating container nursery greenhouses, primarily for the production of conifer tree seedlings. In order to facilitate the construction of facilities and to maximize the efficient use of the Property by IFA, City agreed to allow IFA to place its facilities on top of the Easement Area in exchange for IFA providing the City with an agreement to hold the City harmless for use and enjoyment of the Easement Area, and maintenance and repair activities within the Easement Area, that may damage IFA facilities and/or interfere with IFA business activities. Pursuant to its rights under the lease, IFA has constructed a number of facilities on the Property, one or more of which has been placed within the Easement Area. Therefore, in consideration of being allowed to keep its existing facilities within the Easement Area, IFA hereby releases, waives, discharges, agrees to hold harmless and covenants not to sue City/and/or any agent, officer or employee of City (collectively, "The City"), from and for all liability for any and all loss or damage: suffered by IFA; relating to its facilities within the Easement Area and/or any interference with IFA business activities; and arising out of the existence of Easement on the Property, use and enjoyment of the Easement by the City and/or any maintenance, repair, replacement, construction or reconstruction of the City's sanitary sewer lines within the Easement Area. In the event City is required to access the Easement Area for

maintenance, repair, replacement or construction activities, IFA agrees to move its crops and benches and to generally make the affected area available for the work in an expeditious manner and at IFA expense. City agrees to complete the work and to return the disturbed surface area to its former state in an expeditious manner, and at City's expense.

5. This Easement and rights reserved herein shall be perpetual.
6. This Easement shall run with the land as to all properties benefited and burdened by this Easement, including any division or partition of the Property. The rights, covenants and obligations of this Easement shall bind, burden and/or benefit each party's successors, assigns, heirs or beneficiaries under deed of trust.
7. This easement shall include the perpetual right of City to enter upon the Property at any necessary time, so long as City uses its best efforts to coordinate such access with IFA so as not to unreasonably interfere with the ongoing activities of IFA.

TERMS ACCEPTED BY IFA NURSERIES, INC.

By: _____


David Stearns, President & CEO

Date: _____


12/30/05