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Klamath County, Oregon

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Return Address:
Avista Utilities
Real Estate Department
1411 East Mission, P. O. Box 3727
Spokane, Washington 99220-3727

**PUBLIC ROADWAY
RIGHT OF WAY EASEMENT**

For Mutual Benefits and Good Consideration, the sufficiency and receipt of which are hereby acknowledged, **AVISTA CORPORATION**, a Washington corporation, "Grantor", hereby grants, conveys and warrants to the **CITY OF KLAMATH FALLS, OREGON**, "Grantee", on behalf of the public, a perpetual, exclusive public right-of-way easement, "Easement", on, over, under, along and across the real property located in the Southeast Quarter (SE¼) of Section 26 and the Northeast Quarter (NE¼) of Section 35, all located in Township 38 South, Range 9 East, Willamette Meridian, Klamath County, State of Oregon, "Easement Area", described in the attached Exhibit "A" and as shown on attached Exhibit "B" and by this reference made a part hereof.

1. **PURPOSE.** Grantee shall have the right to construct, reconstruct, operate, maintain, repair, and replace a public roadway as identified on said Exhibit "B" as North Homedale Road, together with all necessary fixtures and appurtenances, "Facilities". Subject to the terms of this Easement as set forth herein: this Easement shall be used for public vehicular and pedestrian access and for installation, maintenance, repair, replacement and use of public utilities and all necessary appurtenances in, upon, over, across and under the Easement Area, together with the right of reasonable ingress and egress over and across the property owned by Grantor adjacent to the Easement Area for purposes of Grantee's use of this Easement. In conjunction with such use, and subject to the terms of this Easement, Grantee, and others authorized to utilize the Easement, may construct, reconstruct, maintain and repair the Facilities.

2. **ACCESS AND DAMAGE.** Grantee shall have access over and across the Easement Area for the purpose of the installation, repair and maintenance of said Facilities, provided the Grantee repairs damages or compensates the Grantor for any damage to said properties as a result of such access and repair and maintenance.

3. **RIGHT OF WAY CLEARING AND MAINTENANCE.** Grantee shall have the right to cut, trim and remove any and all brush, branches and trees, including danger trees, on the Easement Area that, in the opinion of the Grantee, could interfere with the safe and reliable operation of Grantee's Facilities as described herein.

4. **GRANTOR'S USE OF THE PROPERTY.** Grantors use of the herein described property is for a High Pressure Natural Gas Pipeline. Except for such Pipeline, Grantee shall not erect any buildings or other permanent structures within the Easement Area that interfere with Grantee's use and enjoyment of the Easement. Grantee's use shall not interfere with Grantor's use of its' pipeline and facilities. Specifically:

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retail City of Klamath Falls

- A. If Grantee's use of the Easement Area should at any time become a hazard to the presently installed Natural Gas facilities of Grantor or facilities added or constructed in the future, or should such use interfere with the construction, operation, inspection, maintenance or repair of the same or with Grantor's access along such Easement Area, the Grantee will be required to correct such hazard or interference, at Grantee's expense.
- B. No filling and/or grading within said Easement Area shall be accomplished in such manner as to reduce vertical distance between the ground surface and Grantor's natural gas facilities or jeopardize the integrity of any of Grantor's facilities. Grantee must pay for any and all costs related to changing the Grantor's facilities in any way as a result of their uses.
- C. Any damage to Grantor's facilities caused by or resulting from Grantee's use of the Easement Area will be repaired by Grantor and the actual cost of such repair shall be charged against and paid by the Grantee. All repairs, corrections, alterations and modifications to Grantor's pipeline and facilities will be done by the Grantor.
- D. At no time will the Easement Area be used for any other purpose than for said Facilities of Grantee as described in Paragraph 1, above.
- E. At no time shall Grantor's access to its' natural gas pipeline and associated facilities along the Easement Area be permanently blocked off or unduly restricted. Notwithstanding the Facilities as described in Paragraph 1, above, no fences shall be constructed within the Easement Area, landscaping must be restored to the before construction condition, no materials, structure or equipment shall be stored on the Easement Area, and any construction within the Easement Area must be consistent with the all applicable laws and codes.
- F. Natural gas pipelines and associated facilities have been or will be constructed, operated, and maintained within the Easement Area. Said facilities may require tree and brush cutting within and adjacent to the Easement Area. Grantor retains the right to cut, trim, remove and dispose of any and all brush, trees, and other vegetation presently existing upon the Easement Area. Grantor shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees and other vegetation upon the Easement Area.
- G. The Grantee must notify Grantor's Klamath Falls Construction Office at (541) 884-3048 at least 48 hours prior to the commencement of any and all construction activities related to such uses and to coordinate the protection of the gas pipeline and associated facilities. A representative of the Grantor must be present at any time the Grantor's pipeline or facilities are exposed or any excavation occurs in the Easement Area during the construction, repair, removal or maintenance of the Grantee's Facilities.
5. **INDEMNITY.** The Grantee agrees to indemnify and hold harmless the Grantor from any and all claims for damages suffered by Grantor including Grantor's agents, guests and employees which may be caused by Grantee's negligence in the exercise of the rights herein granted, provided, that the Grantee shall not be responsible to Grantor or Grantor's agents, guests or employees for any damages or injury to any person or property caused by acts or omissions of Grantor, including Grantor's agents, guests or invitees.
6. **SUCCESSORS AND ASSIGNS.** This Easement shall run with the land as to all properties burdened by this Easement, including any division or partition of Grantor's property. The rights and obligations of the parties shall be for the benefit of and be binding upon their respective successors, heirs and assigns.

DATED this 19th day of January, 2006

GRANTOR
AVISTA CORPORATION

Donald J. Malisani
By Donald J. Malisani, Manager, Real Estate Department

STATE OF WASHINGTON)
) ss.
COUNTY OF SPOKANE)

On this day personally appeared before me Donald J. Malisani, known to me to be Manager, Real Estate Department of the Corporation who executed the within and forgoing instrument, and acknowledged to me that such Corporation executed the same as a free and voluntary act and deed for the purposes therein mentioned.

GIVEN under my hand and official seal this 17th day of January 2006.

Kenneth G. Carlson

Signature

KENNETH G. CARLSON

Print Name



Notary Public for the State of WASHINGTON

Residing at SPOKANE

My Commission Expires Nov. 11, 2007

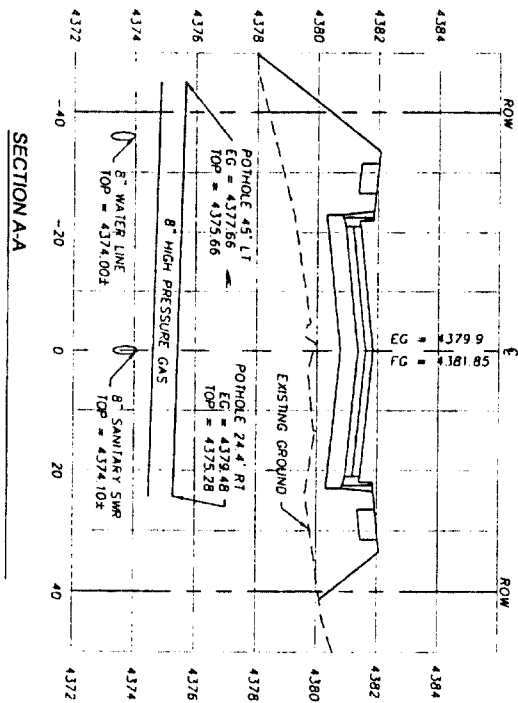
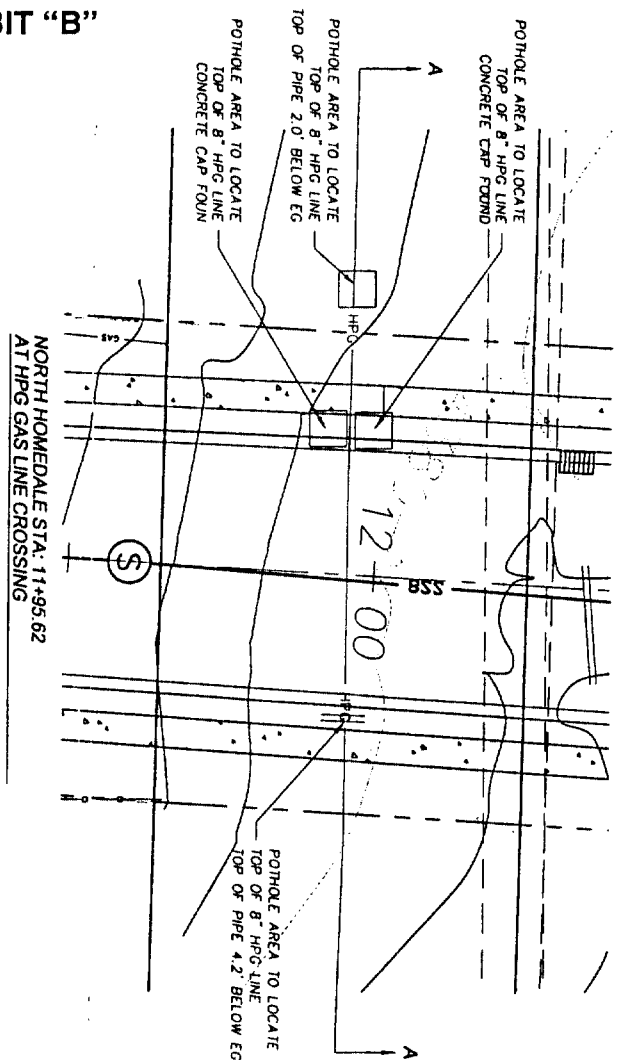
EXHIBIT "A"


PUBLIC ROADWAY RIGHT OF WAY EASEMENT

Said Easement Area is described as a portion of Tract No. 1441, Sky Ridge Estates, Phase 1 located in a portion of Parcel 2 and Parcel 3 of Land Partition 57-96 in the Southeast Quarter (SE¼) of Section Twenty-Six and in the Northeast Quarter (NE¼) of Section Thirty-Five, all located in Township Thirty-Eight South, Range Nine East, Willamette Meridian, Klamath County, State of Oregon, more particularly described as follows:

BEGINNING AT A POINT BEING THE SOUTHEAST CORNER OF SAID SECTION 26 AND THE SOUTHEAST CORNER OF SAID PARCEL 3 OF LAND PARTITION 57-96; THENCE ALONG THE SOUTH LINE OF SAID SECTION 26 NORTH 89° 55' 21" WEST, 25.35 FEET TO THE NORTH LINE OF THE 60' RIGHT-OF-WAY PER VOLUME 332, PAGE 249; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE NORTH 88° 47' 28" WEST, 431.82 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE NORTH 88° 48' 25" WEST, 746.72 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF NORTH HOMEDALE ROAD AND THE **TRUE POINT OF BEGINNING**; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE SOUTH 03° 18' 06" WEST, 60.04 FEET TO THE SOUTH LINE OF SAID 60 FOOT RIGHT-OF-WAY; THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE NORTH 88° 48' 25" WEST, 80.06 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF NORTH HOMEDALE ROAD; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE NORTH 03° 18' 06" EAST, 60.04 FEET TO THE NORTH LINE OF SAID 60 FOOT RIGHT-OF-WAY; THENCE ALONG SAID 60 FOOT RIGHT-OF-WAY LINE SOUTH 88° 48' 25" EAST, 80.06 FEET TO THE TRUE POINT OF BEGINNING. (0.11 ACRES)

EXHIBIT "B"



SHEET 1	DESIGNED BY: <u>TAM</u> CHECKED BY: <u>TPF</u> DRAWN BY: <u>ACL</u> APPROVED BY: <u>TPF</u> LAST MOD: <u>1/18/2008</u> PLOT DATE: <u>01/18/08</u>	SKY RIDGE ESTATES III LLC SKY RIDGE SUBDIVISION - PHASE 1 CROSS SECTION OF HOMEDALE ROAD AND HIGH PRESSURE GAS LINE	 1004 Main St. Klamath Falls, Oregon 97601-5813 (541) 866-3667 (541) 866-3668 Fax whpacific.com Planners • Engineers • Surveyors • Landscape Architects
	DATE BY REV REVISION EX-DRAWN		
Klamath Falls OR 97601		SCALE: <u>AS SHOWN</u> PROJECT NO. <u>31727</u> DRAWING FILE NAME <u>31727-land-homedale-hpg</u>	