

UTC 85960-KR

AFTER RECORDING RETURN TO:

Klamath Memorial Park, LLC
2680 Memorial Drive
Klamath Falls, OR 97601

GRANTOR:

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

GRANTEE:

Klamath Memorial Park, LLC
2680 Memorial Drive
Klamath Falls, OR 97601

2009-014898

Klamath County, Oregon



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11/19/2009 03:12:31 PM

Fee: \$92.00

TAX STATEMENTS: Until requested otherwise,
send all tax statements to:

Klamath Memorial Park, LLC
2680 Memorial Drive
Klamath Falls, OR 97601

BARGAIN AND SALE DEED

The City of Klamath Falls, Oregon, a Municipal Corporation, Grantor, conveys to Klamath Memorial Park, LLC, **Grantee, a fee simple determinable interest in the real property described below (the "Property") for so long as the property is perpetually and continuously used for cemetery, mortuary and funeral service purposes.

****an Oregon limited liability company**

Grantor retains a possibility of reverter in the Property such that if the Property is not perpetually and continuously used for cemetery, mortuary and funeral service purposes, then the interest of Grantee and its heirs, successors and assigns shall automatically terminate and fee simple title shall revert to Grantor, its successors or assigns. The Property is situated in Klamath County, State of Oregon and is legally described and depicted in Exhibit A, attached hereto and incorporated herein by this reference. In addition to the real property described in Exhibit A, the Property also includes:

- (a) A grant and conveyance of Klamath Project irrigation rights in the Klamath River to irrigate the Property (approximately 30.5 acres, more or less), which is a portion of the total 94.5 acres of such irrigation rights granted to the Grantor herein under the Warren Act Contract number I8-1087 dated May 17, 1944, and which Grantor hereby conveys to Grantee; Grantee shall abide by all statutory and regulatory requirements relating to such irrigation rights; and
- (b) An easement and use agreement, attached hereto as Exhibit B, granting Grantee the right to use the existing irrigation system piping and pump to transport irrigation water from the Klamath River to the Property.

The true and actual consideration paid for such transfer, stated in terms of dollars is \$249,600.00. However, the actual consideration for this transfer consists of or includes other property or value given which is the part of consideration.

In addition to the foregoing restrictions and possibility of reverter, this conveyance is also subject to the following Restrictive Covenants in favor of Grantor, and for the benefit of the public:

Grantee acknowledges that Grantor has been operating the Property as a community cemetery for over 60 years following its establishment in 1946 and that such operation has created many firmly-held community expectations regarding cemetery operations. In recognition of these expectations, this conveyance is subject to the following restrictive covenants and restrictions:

- (a) Grantee will abide by all statutory and regulatory requirements relating to cemetery, mortuary and funeral service operations.
- (b) Grantee will maintain the Property, and all improvements to the Property, in good condition, consistent with the Grantor's current standards of maintenance. This covenant includes, without limitation, the obligation to adequately repair and maintain all structural improvements on the Property and the obligation to keep the cemetery grass, trees and other vegetation and landscaping appropriately watered, mowed, trimmed and maintained.

CTAMT

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RWD

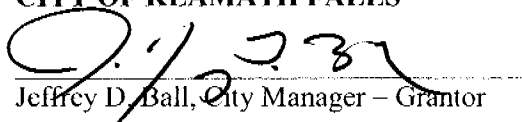
These Restrictive Covenants shall be binding on and inure to the benefit of Grantee, Grantor and their respective successors and assigns.

Grantee is aware and acknowledges that Grantor has made no representations, statements or disclosures of any kind as to any matters concerning the Property and that Grantee is receiving the Property on an "As-Is" basis, with any and all patent and latent defects and all known and unknown conditions. Because this Deed includes the possibility of reverter to Grantor, Grantee agrees that it shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Property. Grantee may use or otherwise handle on the Property only those Hazardous Substances typically used or sold in the prudent and safe operation of a cemetery and mortuary facility. Grantee may store such Hazardous Substances on the Property only in quantities necessary to satisfy Grantee's reasonably anticipated needs. Grantee shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Property. In the event of reverter to Grantor, Grantee shall remove all Hazardous Substances from the Premises in compliance with all Environmental Laws. The term *Environmental Law* shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term *Hazardous Substance* shall mean any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. Grantee further agrees to indemnify and hold harmless Grantor for any hazardous materials or Hazardous Substances contamination, as defined under federal and State laws and regulations, that is created on or under the Property on and after the date of this Deed.

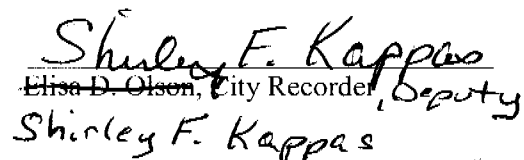
BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

DATED this 18th day of November, 2009.

CITY OF KLAMATH FALLS


Jeffrey D. Ball, City Manager - Grantor

ATTEST:


Shirley F. Kappas
Elisa D. Olson, City Recorder, Deputy



STATE OF OREGON)
)ss.
County of Klamath)

The foregoing instrument was acknowledged before me this 18th day of November, 2009, by Jeffrey D. Ball and ~~Elisa D. Olson~~ ^{Paul W. Davenport}, the City Manager and City Recorder, respectively, of the City of ^{KE} Klamath Falls, an Oregon municipal corporation, on behalf of said municipal corporation as its voluntary act and deed.

BEFORE ME:



Kristi L. Redd
Notary Public for Oregon
My Commission Expires: 11/16/2011

KLAMATH MEMORIAL PARK, LLC.

*By: William F. Davenport,
William F. Davenport, Member ^{member}

*By: Paul W. Davenport, member
Paul W. Davenport, Member

Klamath Memorial Park, LLC hereby accepts the above described property, including, without limitation, the Irrigation System Easement and Agreement (Exhibit B), from the City of Klamath Falls, subject to the limitations and conditions set forth in the foregoing instrument, this 18th day of November, 2009.

STATE OF OREGON)
)ss.
County of Klamath)

The foregoing instrument was acknowledged before me this 18th day of November, 2009, by William F. Davenport and Paul W. Davenport, as Members of Klamath Memorial Park, LLC, an Oregon limited liability company, on behalf of said LLC as its voluntary act and deed.

BEFORE ME:



Kristi L. Redd
Notary Public for Oregon
My Commission Expires: 11/16/2011

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

That portion of the following described property lying Southwest of Memorial Drive and North of the Southside Bypass being in the NW1/4 of Section 8, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the Northeast corner of the NW1/4 NE1/4 of Section 8, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, which point is on the Northwestern right of way line of the Great Northern Railroad and marked by a galvanized iron pipe; thence North 89° 25' West a distance of 1320.0 feet, more or less, to the one quarter corner common to Sections 5 and 8 of said township and range; thence North 89° 23' 15" West a distance of 6.38 feet to the Northeast corner of Westover Terraces, a platted subdivision in said Section 8 in Klamath County, Oregon; thence along the boundary of said Westover Terraces, as follows: South 0° 38' East 1140.0 feet; South 89° 22' West 468.87 feet; South 24° 45' East 82.9 feet; South 0° 38' East 255.64 feet; South 89° 22' West 885.0 feet; to the Southwest corner of said Westover Terraces, which point is marked by a stone monument and is the point of beginning of the survey of said Westover Terraces; thence South 0° 38' East 700.00 feet; thence North 89° 22' East 1320.32 feet to the East line of said Westover Terraces extended Southerly; thence North 0° 38' West along said extended East line of Westover Terraces, a distance of 270.0 feet; thence North 89° 22' East to the Westerly right of way line of the Great Northern Railroad; thence Northeasterly along said right of way line to the point of beginning, being a parcel of land lying in Section 8, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 2:

That portion of the following described property lying Southwest of Memorial Drive and being in the NW1/4 of Section 8, Township 39 South, Range 9 East of the Willamette Meridian, Oregon, more particularly described as follows:

Beginning at the Southwest corner of Westover Terraces, a platted subdivision Klamath County, Oregon; thence North 0° 38' West along the West line of said subdivision, a distance of 665.48 feet; thence North 46° 58' East, a distance of 965.91 feet, to the South line of Greenbriar Terrace, a dedicated street in said Westover Terraces; thence North 89° 22' East, a distance of 152.86 feet, along the South line of said street, to the Northwest corner of Lot 7, Block 5 of said Westover Terraces; thence North 0° 38' West, a distance of 138.87 feet, across Greenbriar Terrace and along the line between Lots 6 and 7, Block 2 of said subdivision; thence North 46° 58' East, a distance of 44.07 feet to the North line of said subdivision; thence South 89° 23' 15" East, a distance of 427.56 feet, to the Northeast corner of said Westover Terraces; thence South 0° 38' East, along the East line of said subdivision, a distance of 1,140.0 feet; thence South 89° 22' West, along the Southerly line of said Westover Terraces, a distance of 468.87 feet to the centerline of Cumberland Road; thence South 24° 45' East, along said centerline, a distance of 82.9 feet, to its intersection with the East line of Maywood Road; thence South 0° 38' East along the East line of said Maywood Road, a distance of 255.64 feet, to its intersection with the Southerly boundary of said Westover Terraces; thence South 89° 22' West, along said South boundary, a distance of 885.0 feet to the point of beginning; being all that portion of Westover Terraces, a platted subdivision in Klamath County, Oregon, excepting portions of Lots 7 and 8, Block 2, of said subdivision, lying Southeasterly from the proposed new location of the Dalles-California State Highway.

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(Legal Description Continued)

EXCEPTING THEREFROM that property described in Deed Volume M92 Page 12957, Deed Volume M00 Page 4227, Deed Volume 2006-01829, Deed Volume 2009-011008, Deed Volume 2009-011009, and Deed Volume 2009-011010; the boundary of said parcels, situated in the NE1/4 of the NW1/4 of Section 8, Township 39 south, Range 9 East of the Willamette Meridian, Klamath County, more particularly described as follows:

Beginning at a 3/4 inch iron pin on the southwesterly right-of-way line of Memorial Drive, said point being the southeast corner of that property described in Deed Volume M92 Page 12957; thence North 23°53'40" West, along said southwesterly right-of-way line, a distance of 289.40 feet to the northeast corner of that property described in Deed Volume 2009-011010; thence South 66°06'20" West, 115.00 feet, along the north line of said Deed Volume 2009-011010; thence South 23°53'40" East, parallel with said southwesterly right-of-way line of Memorial Drive, a distance of 289.40 feet to the southwest corner of that property described in Deed Volume M92 Page 12957; thence North 66°06'20" East, 115.00 feet to the point of beginning. Basis of Bearings is Property Line Adjustments 7-09, 8-09, and 9-09 on file in the office of the Klamath County Surveyor.

JJD
PWP
JB

IRRIGATION SYSTEM EASEMENT AND USE AGREEMENT
[Exhibit B to Bargain and Sale Deed]

As part of the foregoing property conveyance, the Grantor, City of Klamath Falls, hereby grants to Grantee [Name], a perpetual non-exclusive irrigation easement ("Easement") on the following terms and conditions.

RECITALS

- A. On May 17, 1944 Grantor/City and the United States of America, Bureau of Reclamation, ("USA") entered into a contract "For Water Supply Pursuant to the Warren Act" (contract number I8-1087, herein referred to as the "Warren Act Contract"). Under the Warren Act Contract, USA grants Klamath Project irrigation rights in the Klamath River to Grantor/City sufficient to irrigate specified irrigable lands, not exceeding 94.5 acres.
- B. In order to exercise its rights to irrigation water pursuant to the Warren Act Contract, Grantor/City constructed an irrigation system consisting of a pumphouse, pump, 8" irrigation pipelines and miscellaneous appurtenances ("Irrigation System"). The Irrigation System is generally located as depicted on Exhibit B-1, attached hereto.
- C. The authorization for Grantor/City to place the portion of the Irrigation System from the Klamath River to the Memorial Drive right-of-way (formerly Kesterson Road and Cumberland Road) is included in two documents.
- i) The portion of the irrigation System located from the Klamath River and under the railroad tracks to the westerly side of the railroad tracks is authorized pursuant to Permit/Agreement Number 42591 dated September 1, 1944 between Great Northern Railway Company and Grantor/City. The permit allows Grantor/City to "excavate, construct, maintain and operate an 8-inch water pipe encased in concrete" and "to construct, maintain and operate a pumphouse." The location of the pumphouse and this section of pipeline are depicted on Exhibit B-2, attached hereto, which is a copy of an Exhibit attached to the Permit. The Permit is also referenced and depicted on the plat of Klamath County Land Partition 94-2, according to the official plat thereof on file in the records of Klamath County, Oregon.
 - ii) The portion of the Irrigation System located between the westerly side of the railroad tracks and the Memorial Drive right-of-way is situated in an area reserved in a deed from Grantor/City to Klamath County dated August 12, 1953 and recorded at Vol. 262, Page 398 in the deed records of Klamath County, Oregon. The Deed states: "... except the City of Klamath Falls, retains all of those rights to their water line as show on quitclaim deed recorded on page 249 in book 174 Deed Records of Klamath County, Oregon, and retains the right to go upon said premises to repair or replace same; and no building or object shall be constructed over said water lines; and all buildings placed on said property shall be as good and sightly as those of the City of Klamath Falls, on adjoining property." The location of this section of pipeline is depicted on Exhibit B-3, attached hereto.

MJD
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JB *RA*

- D. The remainder of the Irrigation System is within the Memorial Drive right-of-way, a roadway under the jurisdiction of Klamath County, except for that portion crossing under the Southside Expressway (OR 140), which portion predates construction of the Expressway and is currently being permitted by the Oregon Department of Transportation.
- E. Grantor/City has for many years used the Irrigation System to provide irrigation water for approximately 16.5 acres of Klamath Memorial Park, which is located within the 94.5 acres described in the Warren Act Contract. Grantor has not in the recent past, and is not currently, irrigating any portion of the 94.5 acres except for Klamath Memorial Park.
- F. The Property conveyed in the foregoing Deed includes the 16.5 irrigated acres at Klamath Memorial Park, as well as approximately 14 additional acres, both of which, by the terms and conditions of the Deed, may only be used for cemetery, mortuary and funeral service purposes. As part of the conveyance, Grantor/City has conveyed to Grantee the Klamath Project Irrigation rights in the Klamath River (granted to Grantor/City under the Warren Act Contract) to irrigate the Property (consisting of approximately 30.5 acres, more or less).
- G. Grantor/City and Grantee intend by this Easement and Use Agreement to grant Grantee the right to use a portion of the Irrigation System for purposes of irrigating the Property as described in the Deed and to describe the terms and conditions of such use by Grantee.

AGREEMENT

In consideration of the foregoing recitals, and in particular the transfer of the Property to Grantee, Grantor and Grantee agree as follows:

1. This grant of easement is limited by and restricted to those rights granted to or retained by Grantor as described in Recitals C and D above, together with the provisions of any other documents and concepts in law and equity, whether or not identified herein, pertaining to Grantor's rights in the Irrigation System and the properties on which the System is located.
2. Grantor hereby grants to Grantee a non-exclusive irrigation easement representing an undivided 32.3 % (30.5 acres ÷ 94.5 acres) interest in the Irrigation System, such undivided interest being held in common with Grantor's interest therein. Grantor specifically retains an undivided 67.7% interest in the Irrigation System held in common with Grantee's interest.
3. The Easement consists of a strip of land varying in width and following the path of the Irrigation System as depicted in attached Exhibit B-1, which is incorporated herein by reference ("Easement Area").
4. This Easement is appurtenant to and benefits the Property as described in the foregoing Deed.

Handwritten signatures:
JFD
PWL
JLB

5. This Easement shall be used for the purposes of reconstructing, inspecting, repairing, maintaining, altering and operating the Irrigation System, together with all necessary appurtenances, in, into, upon, over across and under the Easement Area, together with the right of reasonable ingress and egress for purposes of Grantee's use of this Easement. Grantor and Grantee shall cooperate during periods of joint use to that each party's use shall cause a minimum of interference to the others; however, in case of conflict, the party's right of use with the greater public benefit, as reasonably determined by Grantor, shall be dominant.
6. Grantee shall be responsible for all costs and expenses associated with the operation, maintenance, repair and replacement of the Irrigation System. Provided, however, that if Grantor shall at some point in the future elect to irrigate other lands included within the 94.5 acres as permitted under the Warren Act Contract, Grantor shall participate proportionally in such expenses based on the number of additional acres being irrigated at the time the expense is incurred. For example, if Grantor is irrigating 10 acres of land, Grantor's share of the expenses would be 32.8% (10 acres ÷ 32.5 acres) of the total costs of operation, maintenance, repair or replacement. Grantor reserves the right in its sole discretion to make any repair or replacement, in which event Grantee shall pay its proportionate share of the total expense incurred by Grantor, within 30 days of invoice from Grantor to Grantee.
7. Grantee agrees to indemnify, defend and hold harmless Grantor from any loss, claim or liability to Grantor arising out of Grantee's use of the Easement. Grantee assumes all risk arising out of its use of the Easement; Grantor shall have no liability to Grantee or others for any conditions existing thereon. Grantee is receiving this Easement and its share of the Irrigation System on an "AS-IS" basis, with any and all patent and latent defects and all known or unknown conditions.
8. This Easement and rights reserved herein shall be perpetual.
9. 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 or beneficiaries under deed of trust.

IN WITNESS WHEREOF, We have hereto set our hands this 18th day of November, 2009.

GRANTOR:
CITY OF KLAMATH FALLS

By: _____

Jeff Ball, City Manager

GRANTEE:
KLAMATH MEMORIAL PARK, LLC

By: _____

William F. Davenport, Member

By: _____

Paul W. Davenport, Member

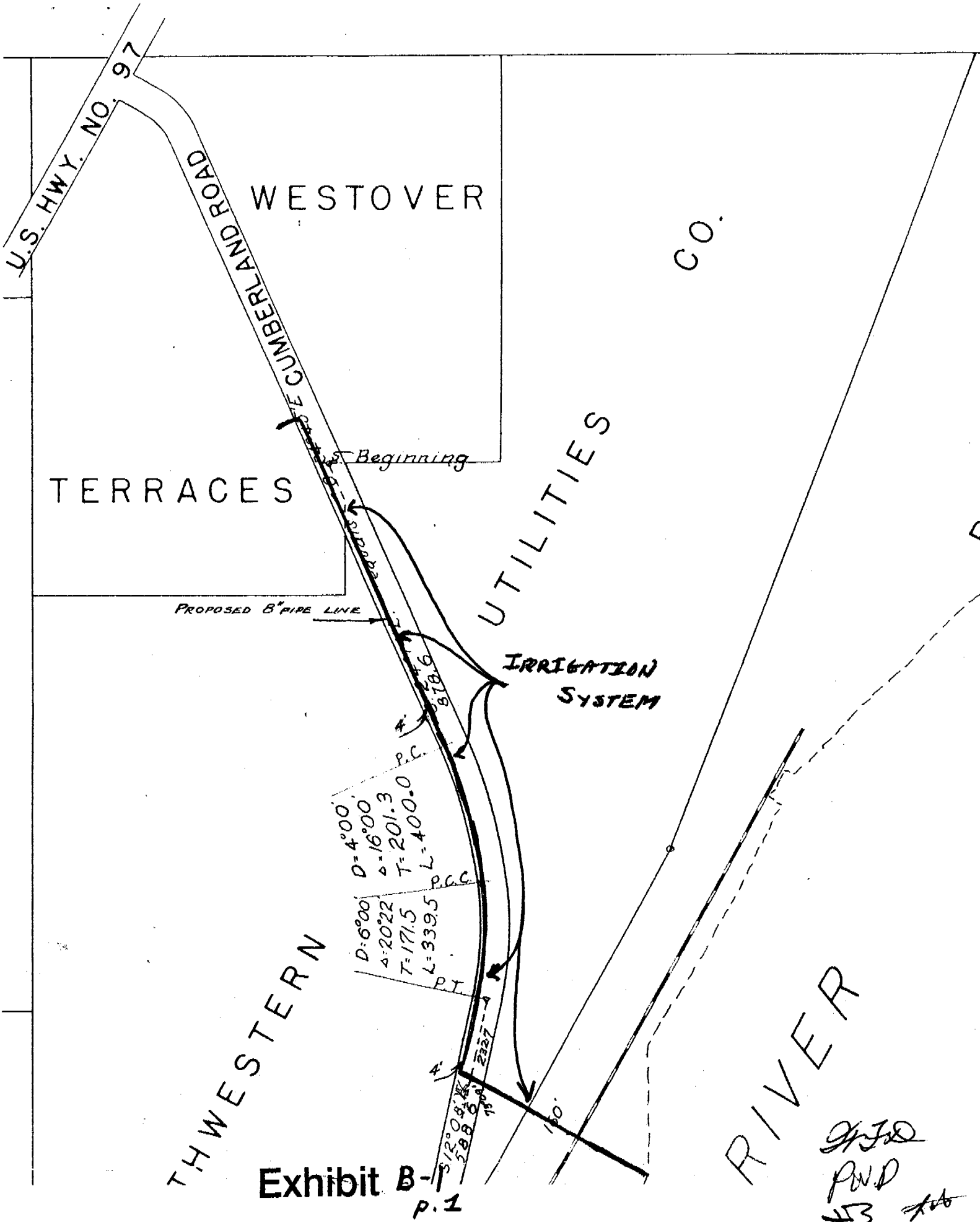


Exhibit B -
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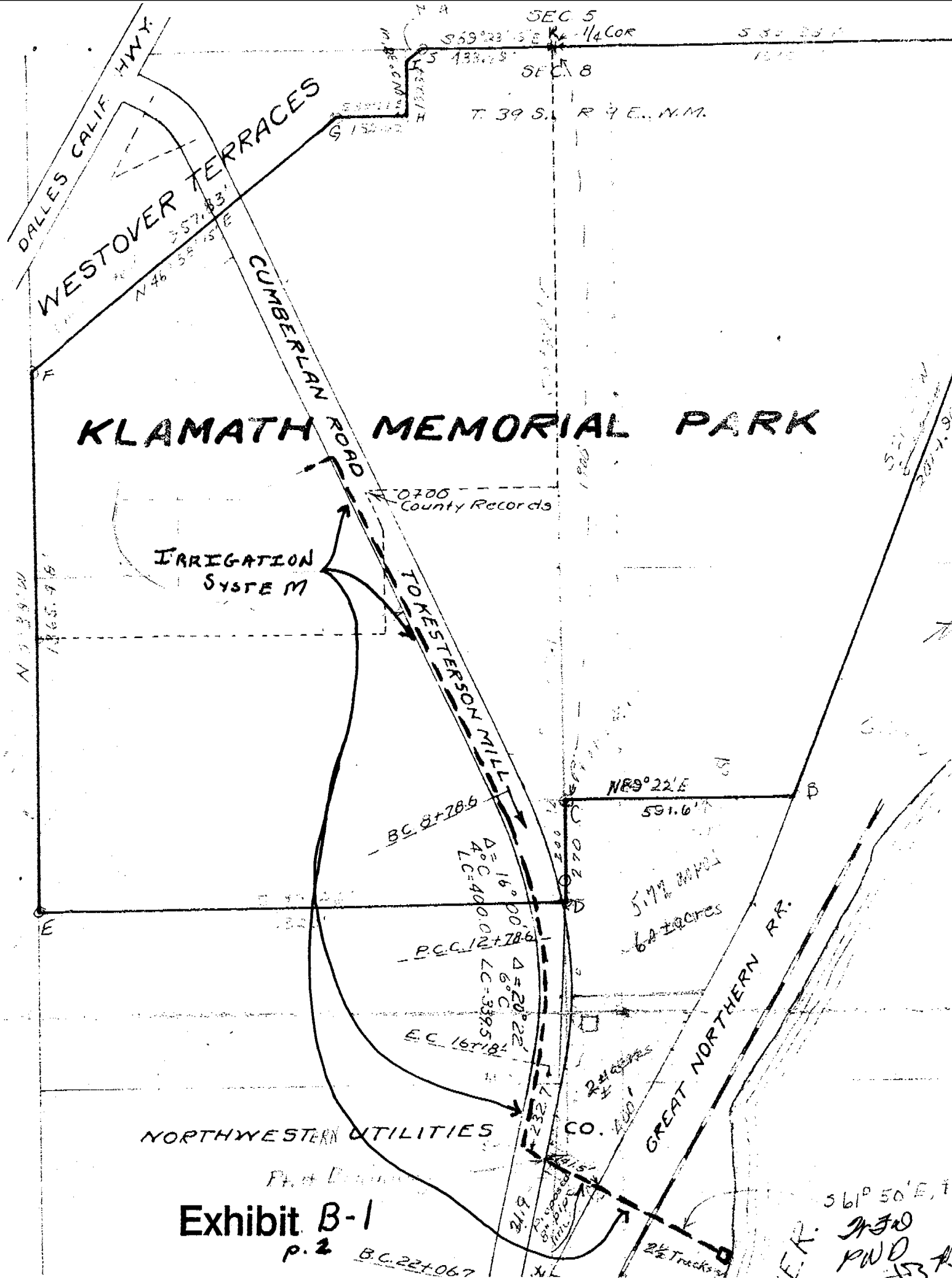


Exhibit B-1

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