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2018-007736

Klamath County, Oregon



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Fee: \$107.00

AFTER RECORDING, RETURN TO:

Horsefly Irrigation District
P.O. Box 188
Bonanza, OR 97623

GRANTOR:

Iridium Land Company, LLC
5222 Burgdorf Road
Bonanza, OR 97623

GRANTEE:

Horsefly Irrigation District
P.O. Box 188
Bonanza, OR 97623

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") dated this 26th day of June, 2018 is between Horsefly Irrigation District ("HID" or "District") and Iridium Land Company, an Alaska limited liability company ("Iridium"), owner of the property as described below:

RECITALS

A. HID is a subdivision of the State of Oregon, organized as an irrigation district under Oregon Revised Statutes Chapter 545 and is located in Klamath County, Oregon.

B. Iridium is the owner of real property located at 5222 Burgdorf Road, Bonanza, OR 97623 ("Iridium Property"). The Iridium Property consists of 39.15 acres known as tax lot R-3911-01900-01500-000 and 2.56 acres known as tax lot R-3911-01900-01400-000, situated in the N ½ NE ¼ of Section 19, Township 39 South, Range 11 East, W.M., Klamath County, Oregon. The legal description of the Iridium Property is attached hereto as Exhibit A to this Agreement and is incorporated herein by this reference.

C. HID owns, operates, and maintains irrigation delivery facilities on the Iridium Property.

D. HID maintains the right to enter upon the land of a water user of the District for inspection, maintenance, and regulation of the ditches, pipelines, gates, pumps, and other water infrastructure pursuant to Oregon statute and the *Rules and Regulations Governing the Distribution and use of Water in the Horsefly Irrigation District* ("Rules and Regulations").

E. HID and Iridium wish to provide the HID's unencumbered access to, on and across the Iridium Property to be able to design, construct, inspect, operate, maintain, repair and replace HID's irrigation delivery facilities, including, but not limited to, any ditches, delivery pipes and control structures ("Irrigation Delivery Facilities") within the area depicted in and incorporated by Exhibit B (the "Easement Area").

AGREEMENT

In consideration of the covenants and conditions set forth in this Agreement and other good and valuable consideration, the parties agree to confirm and define the course and extent of HID's right to enter upon and access the Iridium Property and HID's irrigation delivery facilities:

1. **Easement across Iridium Property.** Iridium hereby grants to HID a perpetual nonexclusive easement (the "Easement") in, over, across and through the Iridium Property within the Easement Area. The Easement Area is thirty (30) feet in width, being fifteen (15) feet on either side of the centerline of the District's pipeline. The Easement is granted to permit access to and use of the Easement Area as is reasonably necessary to allow for HID to design, construct, inspect, operate, maintain, repair and replace HID's Irrigation Delivery Facilities. HID shall have the rights of ingress and egress along the Easement Area, as reasonably necessary, for HID's access to the Easement Area.

2. **All Prior Rights Remain in Full Force and Effect.** HID retains all rights of access and operation as HID has enjoyed since the inception of the District.

3. **Encroachments Prohibited.** HID requires unencumbered access to all Irrigation District Facilities in order to operate and maintain its facilities in accordance with Oregon statutory law and HID's *Rules and Regulations*. Iridium agrees not to install or build any structures, fences, or other encroachments on, over or across the Easement Area without first obtaining written permission from HID's District Manager. Any new fences or gates must be built under the specifications of HID under the direction of District staff with the understanding that suitable openings will be provided to enable HID's officers, employees, ditch riders or other authorized personnel to traverse without hindrance.

4. **HID Activity in Easement Area.**

4.1 HID will attempt to cooperate with Iridium to minimize impacts to the Easement Area, but HID is not required to do so except as expressly provided in HID's *Rules and Regulations* or in this Agreement.

4.2 HID will provide reasonable advance notice to Iridium before entering the Easement Area to undertake any preplanned construction work on the Irrigation Delivery Facilities, but HID is not required to obtain Iridium's permission before commencing any such work. Such notice shall be made in person, by phone, or sent to the address then on file in HID's official records. HID is not required to notify Iridium before entering the Easement Area for other purposes.

5. **Damage by Iridium.** Iridium shall have the duty to use due care to avoid damage to HID's Irrigation Delivery Facilities. Iridium shall be liable for any damage, intentional or negligent, including damage from livestock under his possession or control. If such damages do occur, HID may assess the cost of repairs against Iridium.

6. **Miscellaneous.**

6.1 This Agreement may be amended only by an instrument in writing executed by all the parties.

6.2 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

6.3 Electronic and Facsimile Signatures. Electronic and Facsimile transmission of any signed original document, and retransmission of any signed electronic or facsimile transmission, will be the same as delivery of an original. At the request of any party, the parties will confirm electronic or facsimile transmitted signatures by signing an original document.

6.4 Further Assurances. Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, to carry out the intent and accomplish the purposes of this Agreement.

6.5 Waiver. Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

6.6 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.

6.7 Attorney Fees. If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

6.8 Injunctive and Other Equitable Relief. The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other parties will be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

6.9 Exhibits. The exhibits referenced in this Agreement are part of this Agreement as if fully set forth in this Agreement.

6.10 Severability. If any provision of this Agreement is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired.

6.11 Legal Counsel. Iridium acknowledges that this is a legal document and that it has been advised to obtain the advice of legal counsel in connection with its review and execution of this Agreement. Iridium covenants that it will not deny the enforceability of this Agreement on the basis that it elects not to obtain legal counsel to review and approve this Agreement.

Exhibit A

Real property located at 5222 Burgdorf Road, Bonanza, Klamath County, Oregon, more commonly described as follows:

A tract of land situated in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19, Township 39 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the North $\frac{1}{4}$ corner of said Section 19; thence South $00^{\circ} 14' 04''$ West 1,326.94 feet to the Southwest corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 19; thence North $89^{\circ} 47' 39''$ East 1,327.44 feet to the Southeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 19; thence North $50^{\circ} 13' 50''$ East 289.93 feet to the Southwesterly right of way line of the County Road; thence following said line, Northwesterly along the arc of a curve to the right (central angle = $30^{\circ} 54' 45''$ and radius = 670 feet) 361.29 feet; thence North $10^{\circ} 07' 20''$ West 623.01 feet, thence Northerly along the arc of a curve to the right (central angle = $09^{\circ} 01' 22''$ and radius = 1,310 feet) 206.30 feet to the North line of said Section 19; thence South $89^{\circ} 49' 58''$ West along the North line of said Section 19, 1,261.18 feet to the point of beginning.

EASEMENT AREA DIAGRAM

