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Fee: \$102.00

AFTER RECORDING, RETURN TO:
Klamath Irrigation District
6640 KID Lane
Klamath Falls OR 97603

**AGREEMENT RESCINDING AGREEMENT FOR RELEASE
OF WATER AND DRAINAGE RIGHTS**

This Agreement is made effective June 15, 2020 by and between the Klamath Irrigation District ("KID") an Oregon municipal corporation, and Dale and Patricia Toews

RECITALS:

- A. KID is an Oregon municipal corporation and operating pursuant to Oregon Revised Statute Chapter 545.
- B. Dale and Patricia Toews own land within KID, which can be served with irrigation water from facilities operated and maintained by KID.
- C. In 1999, pursuant to an Agreement for Release of Water and Drainage Rights recorded on March 26, 1999, recording instrument Volume M99 Page 10746, Charles W and Roberta Mowdy owners of the land, entered into an Agreement with KID exempting certain land from the charges of KID for operation and maintenance of KID maintained facilities in Klamath County, Oregon, before Parcel was Divided into 4 Parcels, Land Partition 73-05, more particularly described as follows:

MTL 3909-010AC-00600 - Altamont Acres, Block 8, Lot 16

In addition, the landowners released, waived, and assigned to KID any rights the real property had to the receipt of irrigation water and other services from KID.

- D. Dale and Patricia Towes now desire to receive the delivery of irrigation water from KID and other services provided by KID and has paid to KID the sum of \$227.75 (.23 acres of land) representing payment in full of all operation and maintenance charges and interest that would have been paid by the owners of the subject real property to KID for 2020.
- E. KID is willing to enter into this Agreement rescinding the Agreement for Release of Water and Drainage Rights and acknowledges receipt of said payment.

Therefore, the parties agree as follows:

AGREEMENT:

1. The Agreement for Release of Water and Drainage Rights recorded March 26, 1999, recording

instrument Volume M99 Page 10746 of the deed records of Klamath County, Oregon, is hereby rescinded for Tax Lot 3909-010AC-00602, Land Partition 73-05, described as follows:

Parcel 3 of land Partition 73-05, said Land Partition being a replat of Parcel 1 and Parcel 3 of Land Partition 34-98, situated in the SW1/4 NE1/4 of section 10, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon. TOGETHER WITH an easement for access and utilities over and across a Southerly portion of Parcel 2 of Land Partition 73-05, and Southeasterly portion of Parcel 1 of Land Partition 73-05, as delineated on the face of said Land Partition.

2. KID acknowledges payment in full of all charges and interest pertaining to the year 2020 due and payable from the subject land, which is also described as Klamath County Assessor Tax lot: 3909-010AC-00602.
3. The parties acknowledge that KID filed Claims in the Klamath River Adjudication for water rights for irrigation of the land served by KID. Some Contestants to KID's claim in the Adjudication may assert that the land subject to this Agreement is not entitled to receive irrigation water because it released its right to receive irrigation water from KID. KID agrees that to the extent allowed by law, in the event challenge to the delivery of irrigation water to the subject land is made, KID will exercise all authority it has to transfer irrigation water from other land exempted from assessments to the subject land on a temporary and, then when possible, permanent basis to fully serve the irrigation needs to the subject land. However, Dale and Patricia Toews acknowledge that KID cannot and does not warrant delivery of irrigation water or the ultimate issuance of a Water Right Certificate by the State of Oregon for irrigation water for the subject land. Dale and Patricia Toews agree that they will cooperate with KID in executing any documents that may be reasonably needed to perfect a water right for the subject land.
 - A. Pursuant to the terms of and conditions of an Amendatory Contract between the United States of America and the Klamath Irrigation District, dated November 29, 1954, KID operates and maintains certain head gates, canals, laterals, pumps, and other improvements owned by the United States used to provide irrigation water to certain lands located between Upper Klamath Lake in Klamath County, Oregon, and the Oregon-California border. ORS 545.271 provides that an irrigation district may provide for and furnish water for lands not included within the district and for lands within the district, but not subject to assessment by the district.
 - B. The parties mutually agree the existing covenant as follows:
 1. **Diversion of Delivery of Water.** Subject to the terms and conditions of this Contract, KID agrees that it will divert and deliver irrigation water during the annual irrigation season established by KID's Board of Director's to Landowner's head gate or other point of diversion
 2. **Quantity of Water.** The water delivered hereunder shall be limited to the quantity that may be used beneficially upon the land without waste and shall be limited to not more than 3.5-acre feet of water for each acre irrigated during the irrigation season.
 3. **Rules and Regulations.** This Contract shall be subject to all Bylaws, rules, regulations, notices, and orders established by KID's Board of Directors now existing and as hereafter amended, and Landowner shall strictly comply with all such regulations.
 4. **Delivery and Use of Water.** KID shall have full control over all ditches, gates, pumps, and other structures required to deliver the water hereunder. When water is desired, Landowner shall give KID notice of the amount requested and the date the water is needed, as provided by KID's rules.

The water shall be delivered by KID to the Landowner at the point of delivery determined by KID and shall be received by the Landowner and conveyed at the Landowner's expense to Landowner's land. At any time, KID may require that Landowner install a measuring device at the point of delivery meeting the standards and criteria established by KID, and Landowner shall comply with all direction provided by KID with respect to the maintenance of the measuring device, the recording, and reporting of the amount of water delivered to Landowner. The water so delivered shall be used exclusively upon the land shown on **Exhibit "A"** and shall not be permitted to collect or run upon other land or be wasted in any manner.

5. **Water and Seepage Water.** Subject to the provisions of Article 28 of the Amendatory Contract between KID and the United States described above, KID reserves the right to collect all waste and seepage water coming from the land shown on **Exhibit "A"**. Landowner releases KID, the United States, and the officers, agents, and employees of KID and the United States, from every claim for damage, direct or indirect, arising because of the presence of waste or seepage water on all land owned by Landowner.
6. **Shortage of Water.** Because of drought, inaccuracy in distribution, limitations of the delivery facilities, regulation of water by the State of Oregon, the taking of water by the United States, or for other cause, there may occur at times a shortage in the quantity of water available for delivery by KID. In no event whatsoever, including events arising from the negligence of KID, its officers, employees, agents, and contractors, shall any liability accrue against KID, the United States, and their officers, agents, employees, and contractors, for any damage, direct or indirect, arising from the failure of Landowner to receive irrigation water from KID. The delivery of water under this Contract is and shall be subordinate to the delivery of water by KID to other water users. In the event of shortage of available water supply for any cause, KID reserves the right at any time to cease delivery of water to Landowner, to reduce the amount of water to be delivered, to temporarily interrupt delivery, or to postpone the time of delivery. If KID determines that water will not be available, then it shall provide notice to the Landowner. Further, if during the irrigation season KID determines that it is appropriate to terminate water delivery to Landowner, it shall promptly provide notice to Landowner. In the event that KID determines that it will not be able to deliver any water to Landowner during the irrigation season, then any charges paid by Landowner for that irrigation season will be carried forward and applied to charges dues and payable for the following irrigation season.
7. **Payment for Water Delivery.** The owner shall be assessed at the rate of \$75.75 per acre minimum.
8. **Indemnity.** Landowner shall indemnify, defend, and hold KID, its officers, employees, and directors, harmless from any and all claims of liability and damage resulting from the diversion and use of water by Landowner and the use of the facilities operated and maintained by KID under its Contract with the United States, including the rights of way and facilities owned by the United States.
9. **Records.** Landowner shall furnish to KID a record of all crops raised, including agricultural and livestock products, on the land shown on **Exhibit "A"** on or before **October 1st** of each calendar year during which water is delivered under this Contract.
4. Dale and Patricia Toews hereby recognize, ratify, grant, and confirm the existence of all existing rights of KID and the United States affecting landowners' property, including without limitation by this recital, all rights of way, easements, and servitudes for all irrigation and drainage facilities of the United States and/or KID as now constructed and located upon or affecting landowners' said property and agree that KID and the United States each now own, have, hold, and shall continue to own, have, and hold a prescriptive right, right of way, easement, and servitude for all percolation, seepage, leakage, overflow, flooding, and any failure or lack of drainage that may now exist or that has at any time heretofore occurred or resulted from any irrigation or drainage facility now constructed or in existence on or near any part of the subject property.

5. Dale and Patricia Toews hereby absolve, waive, and release both KID and the United States from any all claims of liability for any damages or injury to person or property that may have heretofore occurred or that may be occurring in connection with the ownership, operation, and maintenance of the Klamath Reclamation Project.

IN WITNESS WHEREOF, the parties have hereunto set their hand effective as of the date first set forth above.

KLAMATH IRRIGATION DISTRICT

DALE AND PATRICIA TOWES
3528 Crest Street
Klamath Falls, OR 97603

By:

Ty Kiewer
Its President

Dale Toews
Dale Toews

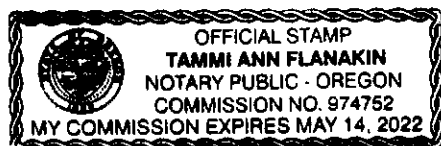
Patricia Toews
Patricia Toews

STATE OF OREGON)

) ss.

County of Klamath)

This instrument was acknowledged before me on this 16th day of June, 2020, by Tyrel Kiewer, as President, of Klamath Irrigation District.



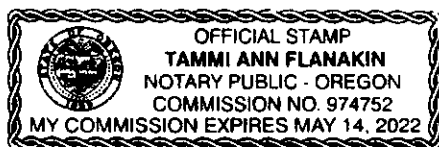
Tammi Ann Flanakin
Notary Public for Oregon
My Commission Expires: 5-14-2022

STATE OF OREGON)

) ss.

County of Klamath)

This instrument was acknowledged before me on this 15th day of June, 2020, by Dale Toews & Patricia Toews.



Tammi Ann Flanakin
Notary Public for Oregon
My Commission Expires: 5-14-2022

Exhibit "A"

Exhibit "A"

Parcel 3 of land Partition 73-05, said Land Partition being a replat of Parcel 1 and Parcel 3 of Land Partition 34-98, situated in the SW1/4 NE1/4 of section 10, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon. TOGETHER WITH an easement for access and utilities over and across a Southerly portion of Parcel 2 of Land Partition 73-05, and Southeasterly portion of Parcel 1 of Land Partition 73-05, as delineated on the face of said Land Partition.