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K-43462

RECIPROCAL EASEMENT AGREEMENT AND DECLARATION  
(Klamath Falls, Oregon)

DATED: February 24, 1993

BETWEEN: FRED MEYER, INC.,  
a Delaware corporation  
Riverside Center, Suite 500  
5100 SW Macadam Avenue  
Portland, Oregon 97201-3831

Fred Meyer

AND: TACO BELL CORP.,  
a California corporation  
17901 Von Karman  
Irvine, California 92714-6212  
Attention: Real Estate Law Department  
Site No.: 86-0073

Owner

Fred Meyer is the owner of certain real property described on the attached Exhibit 1. The "Development" consists of the building developed for Fred Meyer's store and certain land owned and/or from time to time operated by Fred Meyer as part of the development on such real property.

Fred Meyer is selling to Owner the real property described on the attached Exhibit 2 (the "Pad").

NOW, THEREFORE, in consideration of the mutual agreements of the parties set forth in this Reciprocal Easement Agreement and Declaration (the "Agreement") and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Access Easements. The parties agree that each party will have a nonexclusive reciprocal ingress and egress easement and right of way to use the shared access, ingress and egress routes serving the Development and the Pad (the "Easement Area"), as marked on the drawing attached as Exhibit 3, for purposes of access to the respective properties.

2. No Barriers. No fences, walls or barriers to access will be erected on the common boundary lines between the Pad and the Development that would unreasonably interfere with the access between the Pad and the Development or the use of the Easement Area for ingress and egress, without both parties' prior consent.

LL01-8300.1 49900 0046  
After Recording return to:  
TBLD Corp.  
17901 Von Karman Avenue  
Irvine, CA 92714

3. Rights of Use of Accessways. Each party, its tenants, and the agents, employees, tenants, and the customers and invitees of such parties, shall have the nonexclusive right to use the Easement Area for purposes of access to and from the properties owned by the respective parties. With respect to the Easement Area located on the property owned or leased by a party to this Agreement, the party will be free to construct, maintain, improve, repair and reconstruct utility lines over, under or across such Easement Area, to change from time to time the location of the Easement Area on its own property, and to engage in other uses of such Easement Area that are compatible with use for ingress and egress, provided that any such actions do not unreasonably interfere with or impair the parties' right of use of the Easement Area for ingress and egress to the respective properties. Customers and patrons of businesses in the Development shall have the right to cross the Easement Area when going to and from the Pad and the Development.

4. Parking; Limitation. Employees, customers and invitees of businesses on the portions of the Development other than the Pad shall not have or be granted the contractual right to park on the Pad, and employees, customers and invitees of the business on the Pad shall not have or be granted the contractual right to park outside of the Pad. Owner shall maintain on the Pad sufficient parking spaces to meet the needs of Owner's employees, customers and invitees. The parties shall cooperate with each other in taking any reasonable steps required to avoid any abuse of this provision or other violation of this Agreement. Fred Meyer may make and enforce reasonable rules and regulations consistent with this Declaration for the purpose of regulating the use of the Easement Area and enforcement of the provisions of this Agreement and promoting safety, order, and cleanliness of the Development. Each party will cause its tenants and their respective customers, employees, independent contractors and invitees to comply with such reasonable rules and regulations.

5. Covenant and Restrictions on Use.

5.1 Development of Pad. The Pad will be developed and utilized solely for the following use: Taco Bell, Hot 'N Now or other fast food restaurant facilities (with such ancillary operations and office use as are related to such restaurant facility). Such restriction will continue for a period of 10 years from and after the Closing Date, except for any change of use as is specifically approved in advance by Fred Meyer in writing. Owner covenants and agrees that Taco Bell/Hot 'N Now restaurant facilities will initially be constructed on the Pad and opened for business to the general public within 18 months after the date of recordation of the deed of the Pad to Owner. The improvements on the Pad will be

single-story, not exceeding twenty (20) feet in height above grade (which will not be increased without Fred Meyer's reasonable approval). The building on the Pad will not in any event exceed 25 percent of gross square footage of the Pad. Such height and coverage ratio will not in any event exceed the limitations imposed by applicable legal requirements. During the term of this Agreement, Fred Meyer will have the right of prior review and approval of the following: (i) the architectural plans for improvements within the Pad (excluding interior tenant improvements and interior alterations), changes to elevations within the Pad, and any changes to any of the matters shown on the final site plan for the Pad; and (ii) any proposed change of use of the Pad from that specified above. Fred Meyer's review of architectural matters will include architectural design, style, quality of materials and construction, and compatibility (in Fred Meyer's sole judgment reasonably exercised) of the improvement or change compared to the other portions of the Development. Fred Meyer's review and decision whether to approve or disapprove a request for approval of a change in use under subparagraph 5.1(ii) will be based on whether the proposed use is compatible with other "exclusive use" commitments by Fred Meyer and other actual or permitted uses in other portions of the Development (including, without limitation, that of Fred Meyer). Fred Meyer will have no obligation to approve any use which is prohibited under paragraph 6 below, and Fred Meyer's disapproval thereof is mutually agreed by the parties to be reasonable.

5.2 Restrictions Affecting the Development. If another pad is subsequently created within the cross-hatched area identified as the "Restricted Area" on the attached Exhibit 4, unless Fred Meyer subsequently re-acquires the fee title to Owner's Pad and Owner's Pad is then free of third-party leases permitting "Mexican food" restaurant operations, such pad (a "New Pad") will not be used for the operation of a restaurant facility, which has gross sales from the sale of "Mexican food" entrees (such as tacos, tortillas, fajitas and other entrees which are distinctively Mexican food fare), hamburgers and/or cheeseburgers, which exceed the following: (i) from the date of recordation of this Agreement (the "Closing Date") until the fifth anniversary thereof, 10 percent of all gross sales; and (ii) from the fifth anniversary of the Closing Date until the tenth anniversary thereof, 15 percent of all gross sales.

In determining whether the foregoing restriction is violated in circumstances in which "Mexican food" entrees, hamburgers and/or cheeseburgers are on the restaurant operation's menu but are not a predominant part of such menu or of the anticipated gross sales of the restaurant operation, the computation of gross sales and the portion of such gross sales from "Mexican food" entrees, hamburgers and/or cheeseburgers

will, upon notice from Owner, be computed and certified on an annual basis, or such shorter period of time (but not less than monthly) as may be reasonable under the circumstances. If "Mexican food" entrees, hamburgers and/or cheeseburgers are a predominant part of the menu, gross sales in excess of the restriction stated in the foregoing paragraph will be deemed an immediate violation of the restriction.

In the event the New Pad is leased (not sold) to the restaurant operator, Fred Meyer and Owner will have the mutual non-exclusive right to enforce the restriction. Fred Meyer will not be liable to Owner for violation of the restriction by a purchaser of the New Pad. In the event the restriction is violated by a lessee of Fred Meyer on the New Pad, Fred Meyer will, upon notice from Owner (or other actual knowledge) as to a violation of the restriction, notify the lessee that it must comply with the foregoing restriction, and Owner may pursue whatever enforcement action against the lessee as may be available under law to enforce compliance with the restriction.

The restriction set forth above will continue for a period of 10 years from and after the Closing Date, except as specifically approved by Owner in advance in writing. This restriction will be subject to the following terms and conditions: (i) this restriction will not apply to or limit in any manner any such operation within the main store building within the Development or any other area outside the Restricted Area (and specifically will not limit in any way the sale of Mexican food items, hamburgers and/or cheeseburgers in such areas which are outside the Restricted Area); (ii) the restriction will terminate if Owner fails to fulfill the covenant stated in paragraph 5.1 above concerning the construction and opening of fast-food restaurant facilities on the Pad within the 18 month period provided therein or to comply with the restriction contained in paragraph 5.1; (iii) the restriction will terminate if Owner ceases to operate on the pad a restaurant facility whose menu consists predominantly of "Mexican food" entrees, hamburgers and/or cheeseburgers; (iv) the restriction will not apply to any expansion of main store building into the Restricted Area.

6. General Restriction on Use. During the term of this Agreement, the Pad will not in any event be leased, subleased, operated or otherwise used for: (i) the display, distribution or sale of any "adult" books, "adult" films, "adult" periodicals or "adult" entertainment, (ii) the establishment or maintenance of a massage parlor, gambling operation, "adult" theatre, "adult" bookstore, "sex" shop, "peep show" or bawdy house or brothel, or any use in violation of applicable zoning and other governmental laws and regulations, (iii) any use which emits an obnoxious odor, noise or sound which can be

heard or smelled outside of any building in the Development, or which is a public or private nuisance; (iv) any distilling, refining, smelting, agricultural or mining operation; (v) any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance); (vi) any dumping, disposing, incineration or reduction of garbage (exclusive of any garbage compactor or dumpster located near the rear or sides of the building that are appropriately screened), or any drilling for or removal of subsurface substances; (vii) any operation primarily used as a warehouse operation and any assembling or manufacturing operation; (viii) any "second-hand" store or "surplus" store; (ix) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; (x) any central laundry, dry cleaning plant, or laundromat (except that this provision shall not prohibit on-site services oriented to pick-up and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Development is located); (ix) any automobile, truck, trailer or recreational vehicle sales, leasing, display or repair; (xii) any jewelry store, pharmacy, nutrition or health food store, grocery store or food market or convenience store; (xiii) any sales, whether for on-site or off-site consumption, of liquor or alcoholic beverages, unless such sales are for on-site consumption only and are less than twenty percent (20%) of the gross sales from the Pad (which will be computed and certified in the same manner as provided in paragraph 5.2 above); and (xiv) any other purposes that are not retail sales, retail services, restaurants or commercial purposes. "Retail Services" shall include, in addition to traditional retail sales, financial institutions, real estate and stock brokerage offices, travel or insurance agencies and similar uses providing services directly to the public.

7. Approvals and Disapprovals. Any disapproval by a party will include a statement of the specific reason(s) for the party's disapproval. Failure to respond or disapprove within 15 days after receipt of a request by a party for approval pursuant to paragraph 5 or for confirmation that a proposed use does not violate paragraph 6 will conclusively be deemed an approval or a confirmation that the architectural matter or use is not in violation of the restrictions in this paragraph. Any lease or occupancy agreement subsequently entered into with respect to the Pad or any New Pad will require that the tenant's use (and any changes to the original use by the tenant) must comply with applicable laws and recorded easements and restrictions affecting the property (including this Agreement). Both parties acknowledge that paragraphs 5 through 7 are an essential part of this Agreement



and, further, that the restrictions set forth in paragraphs 5 and 6 are fair and reasonable to assure each party of its expected benefits under this Agreement and orderly and beneficial development of the Development and the Pad, but not to control competition.

8. Maintenance of Pad. Owner (and its tenants and subtenants of the Pad) will maintain at all times the Pad (including, without limitation, the general cleanliness, operation, replacement, enhancement and preservation of such Pad) in accordance with a standard of operation as first-class facilities maintained in accordance with recognized industry standards for leading regional shopping malls in the geographic area in which the Development is situated.

9. Term. This Agreement shall be perpetual (except as provided below) and shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors, or assigns.

10. Status of Title. This Agreement is granted subject to all prior easements and encumbrances of record. Each party warrants that it will defend the title and the other party's interest under this Agreement against any mortgage, tax lien or construction lien claim affecting the Development or Pad which asserts priority over the interest of the other party under this Agreement and which is attributable to the party itself or its tenants.

11. Protection of Rights of Mortgagees. No breach of the provisions in this Agreement shall defeat or render invalid the lien of any mortgage(s) or deed(s) of trust now or hereunder executed which affects the parties' respective interests pursuant to this Agreement; provided, however, that upon any sale under foreclosure of any mortgage(s) or under the provisions of any deed(s) of trust, any purchaser at such sale, and its successors and assigns, shall hold any and all property interest so purchased subject to all of the provisions of this Agreement.

12. Waiver. Failure at any time to require performance of any provision of this Agreement shall not limit a party's right to enforce the provision. Any waiver of any breach of any provision shall not be a waiver of any succeeding breach or a waiver of any provision of this Agreement.

13. Attorneys' Fees. In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on appeal of such suit or action, and

on any petition for review, in addition to all other sums provided by law.

14. Indemnity. Each party shall defend, indemnify and hold the other harmless from any claim, loss, liability or expense (including reasonable attorneys' fees) arising out of or in connection with the party's own negligence or failure to comply with the terms, restrictions and provisions of this Agreement.

15. Entire Agreement. This Agreement supersedes and replaces all written and oral agreements previously made or existing with respect to the matters set forth above.

16. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State in which the Development is located.

17. Notices. Notices given under this Agreement shall be in writing and will be deemed given and effective when delivered in person to the other party of three (3) business days after being deposited in the U.S. Mails, postage prepaid, and sent by registered or certified mail to the other party's address for notices. Each party shall give notice to each other party of its address for notice by written notice to the other party. In the absence of such notice of a party's address for notice purposes, any notice under this Agreement may be given to the address to which property tax statements are delivered by the taxing authority.

18. Amendments. Except as otherwise set forth herein, this Agreement may not be modified, amended, or terminated except by the written agreement of both parties. A party may waive one or more of its rights under this Agreement in writing signed by the party, and such writing need not be recorded. Otherwise, no modification or amendment of any provision of this Agreement shall be binding unless signed by both parties and recorded in the real property records of the county in which the Development is located.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed as of the day and year first written above.

OWNER:

TACO BELL CORP.

By: 

MAX CRAIG  
VICE PRESIDENT

LL01-8300.1 49900 0046

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Reviewed by  
PRISCILLA M. SLEIGHT  
Date 2-24-93

FRED MEYER:

FRED MEYER, INC.

By: Scott R. Wipfel



STATE OF )  
 ) ss.  
 County of )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_ by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, respectively, of TACO BELL CORP., a California corporation, on behalf of the corporation by its authority duly given, and acknowledged the said instrument to be the act and deed of said corporation.

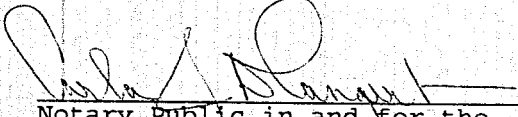
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

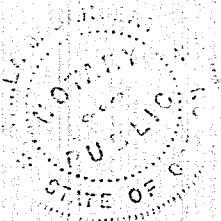
\_\_\_\_\_  
 Notary Public in and for the  
 State of \_\_\_\_\_  
 Residing at: \_\_\_\_\_  
 My commission expires: \_\_\_\_\_

STATE OF OREGON )  
 ) ss.  
 County of Multnomah )

On this 19 day of FEBRUARY, 1993, personally appeared before me SCOTT L. WHIPPLE, known to me to be the VICE PRESIDENT of FRED MEYER, INC., a Delaware corporation, and did say that he executed said instrument on behalf of the corporation by its authority duly given, and acknowledged the said instrument to be the voluntary act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

  
 \_\_\_\_\_  
 Notary Public in and for the  
 State of OREGON  
 Residing at: PORTLAND  
 My commission expires: 11-13-93



## ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On February 24, 1993 before me, Betty Jo Aylward

Date

Notary Public

Personally appeared, Mix Craig

Name(s) of signer(s)

☒ personally known to me - OR ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal

Betty Jo Aylward  
SIGNATURE OF NOTARY

## CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL(S)
- ☒ CORPORATE OFFICER(S)  
Vice President  
TITLE(S)
- ☐ PARTNER(S)
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ SUBSCRIBING WITNESS
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER \_\_\_\_\_

## SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)  
TACO BELL CORP.  
a California corporation

ATTENTION NOTARY: although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized document.

THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:

Title or Type of Document Reciprocal Easement Agreement and Declaration for Site 86-0073  
Number of Pages 8 Date of Document February 24, 1993  
Signer(s) Other Than Named Above \_\_\_\_\_

EXHIBIT 1

## FRED MEYER DEVELOPMENT

A Parcel of land located in the Southwest one-quarter of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Commencing at a brass cap marking the Southwest corner of Section 34 and running North 00 28' 30" West 168.83 feet; thence North 89 31' 30" East 55.00 feet to a point on the easterly right-of-way line of Washburn Way; thence North 00 28' 30" West 1194.44 feet to the point of intersection of the easterly right-of-way line of Washburn Way and the southerly right-of-way line of Eberlein Avenue and the Point of Beginning; thence running along the southerly right-of-way line of Eberlein Avenue, North 89 16' 27" East 588.17 feet; thence, leaving said right-of-way, South 00 28' 07" East 252.96 feet; thence South 89 31' 53" West 588.13 feet to the easterly right-of-way line of Washburn Way; thence along said right-of-way line, North 00 28' 30" West 250.32 feet to the Point of Beginning.

## PARCEL B

A parcel of land located in the Southwest one-quarter of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath Falls, Oregon, being more particularly described as follows:

Commencing at a brass cap marking the Southwest corner of Section 34 and running North 00 28' 30" West 168.83 feet; thence North 89 31' 30" East 55.00 feet to a point on the easterly right-of-way line of Washburn Way and the Point of Beginning; thence, leaving said right-of-way, running 38.10 feet along a 35.00 foot radius curve right, the long chord of which bears North 58 20' 54" East 36.24 feet; thence North 89 31' 53" East 172.03 feet; thence South

00 28' 07" East 159.15 feet to the northerly right-of-way line of Shasta Way; thence along said right-of-way South 89 52' 25" West 192.87 feet; thence North 48 08' 20" West 13.74 feet to the easterly right-of-way line of Washburn Way; thence along said right-of-way North 00 28' 30" West 129.98 feet to the Point of Beginning.

# PARCEL C

A parcel of land located in the southwest one-quarter of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Commencing at a brass cap marking the southwest corner of Section 34 and running North 00 28' 30" West 168.83 feet; thence North 89 31' 30" East 55.00 feet to a point on the easterly right-of-way line of Washburn Way and the Point of Beginning; running thence, along said right-of-way line, North 00 28' 30" West 944.12 feet; thence leaving said right-of-way, North 89 31' 53" East 588.13 feet; thence South 00 28' 07" East 1101.80 feet to the northerly right-of-way line of Shasta Way; thence along said right-of-way South 89 52' 25" West 77.96 feet; thence North 87 15' 50" West 300.37 feet; thence South 89 52' 25" West 7.13 feet; thence leaving said right-of-way, North 00 28' 07" West 159.15 feet; thence South 89 31' 53" West 172.03 feet; thence 38.10 feet along a 35.00 foot radius curve left, the long chord of which bears South 58 20' 54" West 36.24 feet to the Point of Beginning.

EXHIBIT 2

## PAD DESCRIPTION

A parcel of land located in the Southwest one-quarter of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Commencing at a brass cap marking the Southwest corner of Section 34 and running North 00 28'30" West 168.83 feet; thence North 89 31'30" East 55.00 feet to a point on the Easterly right-of-way line of Washburn Way; thence North 00 28'30" West 1194.44 feet to the point of intersection of the Easterly right-of-way line of Washburn Way and the Southerly right-of-way line of Eberlein Avenue and the Point of Beginning; thence running along the Southerly right-of-way line of Eberlein Avenue, North 89 16'27" East 588.17 feet to the Northeast corner of Admiral Court; thence, leaving said right-of-way South 00 28'07" East 252.96 feet; thence South 89 31'53" West 588.13 feet to the Easterly right-of-way line of Washburn Way; thence along said right-of-way line, North 00 28'30" West 250.32 feet to the point of beginning.

EXHIBIT 3

## EASEMENT AREA

The "Easement Area" consists of: (i) a 30-foot wide easement area located upon the north boundary line of the Pad on the immediately adjacent property operated by Fred Meyer, providing access to Washburn Way; and (ii) a 40-foot wide easement area located upon the east boundary line of the Pad on the immediately adjacent property operated by Fred Meyer, providing access to Shasta Way.



CONSENT AND AGREEMENT  
(By Owner)

The undersigned is the fee owner and landlord under a certain lease to Fred Meyer, Inc. ("Fred Meyer") dated \_\_\_\_\_, 19\_\_\_\_, ("Lease") covering certain real property within the Klamath Falls, Oregon Fred Meyer Development in Klamath County, Oregon. The Lease covers part of the real property described on the attached Exhibit 1 identified thereon as Parcel C.

NOW, THEREFORE, the undersigned hereby consents to the execution of the foregoing Reciprocal Easement Agreement and Declaration ("Declaration") by FRED MEYER, and agrees that the Parcel owned by the undersigned is bound thereby and that termination of the Lease will not terminate the Declaration as to such Parcel.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

FEE OWNER:

By: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged and sworn to or affirmed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

NOTARY PUBLIC FOR \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Residing at: \_\_\_\_\_

# EXHIBIT 4

## RESTRICTED AREA

1. The area shown on this map is the restricted area of the Fred Meyer Real Estate Properties, Ltd. Klamath Falls Retail Store, and is subject to the terms and conditions of the deed of restriction recorded in Vol. M93, Page 5282.

2. The area shown on this map is the restricted area of the Fred Meyer Real Estate Properties, Ltd. Klamath Falls Retail Store, and is subject to the terms and conditions of the deed of restriction recorded in Vol. M93, Page 5282.

3. The area shown on this map is the restricted area of the Fred Meyer Real Estate Properties, Ltd. Klamath Falls Retail Store, and is subject to the terms and conditions of the deed of restriction recorded in Vol. M93, Page 5282.

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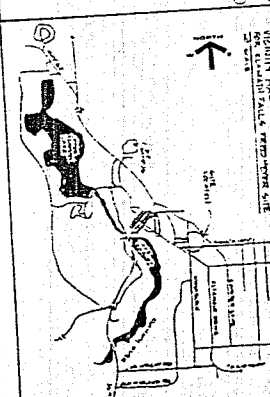
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SCALE PLAN

LEGEND

UTILITY LINES

RESTRICTED AREA

SCALE PLAN

LEGEND

UTILITY LINES

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503-765-1234



STATE OF OREGON: COUNTY OF KLAMATH: SS.

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Evelyn Biehn County Clerk  
By Debbie Muckler

FEE \$100.00