

After recording, return to:

Joel L. Augue  
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Attorneys at Law  
888 SW Fifth Avenue, Suite 1000  
Portland, OR 97204

Until requested otherwise  
send all tax statements to:

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*K-57992*  
**GRANT OF MUTUAL ACCESS EASEMENTS,  
MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANT**

This Agreement is made on March 26, 1998, by and between Frank Wallace and Peggy Wallace ("FRANK AND PEGGY"), Randy Wallace ("RANDY") and Rogue Aggregates, Inc., an Oregon corporation ("ROGUE").

**RECITALS:**

A. FRANK AND PEGGY own that certain real property described on Exhibit A attached (the "WALLACE PROPERTY").

B. RANDY owns the real property described in Exhibit B attached ("RANDY'S PROPERTY").

C. ROGUE owns the property described in Exhibit C attached (the "ROGUE PROPERTY").

D. A 40-foot wide road (the "Road") extends from Buesing Road south across the WALLACE PROPERTY, then across the ROGUE PROPERTY, to RANDY'S PROPERTY. The Road is more particularly described on attached Exhibit D. The parties desire and intend that this Agreement allow them each to use the Road for ingress and egress to their respective properties and for installation of use of utilities.

E. The parties to this Agreement desire that each party have perpetual, nonexclusive use of the Road for ingress and egress and utilities and that such easement shall be appurtenant to their respective properties and subject to the terms, covenants and conditions of this Agreement.

**AGREEMENT:**

1. Grant of Easement. (1) FRANK AND PEGGY do hereby grant to RANDY and ROGUE and reserve unto FRANK AND PEGGY, and (2) RANDY does hereby grant to FRANK AND PEGGY and ROGUE and reserve unto RANDY, and (3) ROGUE does hereby grant to FRANK AND PEGGY and RANDY and reserve unto ROGUE, perpetual, nonexclusive easements for ingress and egress and utilities over the Road (the "Road Easements").

2. Appurtenant. Each and all of the easements, covenants, restrictions and provisions contained in this Agreement: (i) are made for the direct mutual and reciprocal benefit of the owners of the WALLACE PROPERTY, the ROGUE PROPERTY and RANDY'S PROPERTY (collectively the "Properties"); (ii) create mutual, equitable servitudes upon each property in favor of the other Properties; (iii) constitute covenants running with the land; and (iv) shall bind every person or entity having any fee, leasehold or other interest in any portion of the Properties at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction or provision in question or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

3. Scope of Easement. These easements shall be used for access to and from the respective dominate estates and for the installation, repair and maintenance of utility lines. In addition, the parties shall be permitted to construct, use, inspect, maintain and repair the road in the easements.

4. Consideration. The consideration for the easements are the terms and conditions of this Agreement and those terms and conditions contained in the Agreement for Sale and Purchase of Business Assets of even date by and amongst the parties of this Agreement.

5. Nonexclusive. This Agreement is nonexclusive as to the parties to this Agreement and their invitees, guests, employees and agents. No party to this Agreement may transfer its rights under this Agreement to another party not holding an ownership interest in a dominate or servient estate covered by this Agreement.

6. Duration. The duration of this easement shall be perpetual.

7. Maintenance and Repairs. ROGUE shall repair and maintain in its present condition, the Road Easements, subject to the following:

a) If at some time in the future, (1) FRANK AND PEGGY and/or RANDY subdivide their property and (2) sell all or a portion of their property to non-family members, then at the time of said sale, the purchaser(s) and ROGUE shall enter into a road

maintenance and repair agreement based upon proportionate use and ROGUE's repair and maintenance obligations shall be limited to its proportionate use of the Road.

b) If the owner of the WALLACE PROPERTY or RANDY'S PROPERTY substantially increases the commercial use, other than agricultural use, of the Road, such owner shall pay a proportionate share of the repair and maintenance costs based on such commercial use.

8. Restrictive Covenant. FRANK AND PEGGY and RANDY and their heirs, legal representatives, assigns and lessees, hereby acknowledge that the ROGUE PROPERTY is used in the aggregate business and accept ROGUE'S aggregate business practices of removal and processing of aggregate and other permitted and conditional uses allowable on the ROGUE PROPERTY, including but not limited to aggregate removal and processing on adjacent real property acquired by ROGUE.

FRANK AND PEGGY and RANDY and their heirs, legal representatives, assigns and lessees, are hereby prohibited from objecting to heavy machinery traffic, noise, dust, smoke and other types of visual, odor and noise pollutions which arise from ROGUE'S aggregate business and associated business uses, provided that all such visual, odor and noise pollutions are in compliance with all federal, state and local laws, regulations, and restrictions. FRANK AND PEGGY and RANDY and their heirs, legal representatives, assigns and lessees, are further prohibited from objecting to zone changes and conditional use applications for the continuation of its aggregate business, on the ROGUE PROPERTY and/or adjacent aggregate resource property acquired by ROGUE on the basis that the proposed conditional use would have an adverse impact on the subdivision or partition of the WALLACE PROPERTY or RANDY'S PROPERTY. ROGUE and its legal representatives, assigns and lessees, shall not object to the subdivision or partition of the WALLACE PROPERTY or RANDY'S PROPERTY. In the event of such a subdivision or partitioning of the WALLACE PROPERTY or RANDY'S PROPERTY, the Properties so subdivided or partitioned shall be subject to this restrictive covenant, which shall run with the land and shall be binding upon all persons claiming under them, and shall be for the benefit of and be limitations upon all future owners of the WALLACE PROPERTY, RANDY'S PROPERTY and the ROGUE PROPERTY.

9. Restoration of Premises. The owner of the respective dominant estate(s), upon the repair or maintenance of the Road, or the initial installation of any utility, and upon each and every occasion that such utility is repaired, replaced, renewed, added to, or removed, shall restore the premises of the easement and the servient estate (if applicable), and any improvement disturbed by the work, to as good a condition as the premises were in prior to any such installation or work.

10. Real Property Taxes. Each party to this Agreement, or their successors, shall pay any real property taxes assessed to that party's parcel without apportionment thereof relating to the easements.

11. Attorneys' Fees. If any action or other proceeding shall be instituted relating to any term or condition of this Agreement or relating to any of the rights, duties or obligations arising under it, the prevailing party shall be entitled to recover, and the other party or parties agree to pay to the prevailing party, whether or not the matter proceeds to final judgment or decree, in addition to costs and disbursements allowed by law, such sum as the trial and each appellate court may adjudge reasonable as: attorneys' fees in such action or other proceeding, and in any appeal of it; attorneys' fees incurred in investigating and pursuing the prevailing party's rights prior to institution of the action or other proceeding; and costs and expenses incurred and billed with such attorneys' fees (whether or not specifically allowed by statute). Such sum shall also include an amount estimated by the court as the reasonable costs and fees to be incurred by the prevailing party in collecting any monetary judgment or award or otherwise enforcing each order, judgment or decree entered in such action or other proceeding.

12. Injunction. Any party to this Agreement aggrieved by a breach or threatened breach of this Agreement will be entitled to bring an action to prevent, stop or otherwise obtain redress, including specific performance, injunctive relief or other available equitable remedy, without having to post bond or other undertaking therefor. Each party waives any defense it might have as a defendant in such action that the aggrieved party has or had an adequate remedy at law, and agrees that monetary damages for any such breach or threatened breach is and will be inadequate.

13. Remedies Not Exclusive. All rights and remedies afforded a party by this Agreement are cumulative and shall be in addition to any other rights or remedies allowed such party at law, in equity or otherwise.

14. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws and decisions of the state of Oregon, without regard to the conflict of laws rules of such state. If litigation is instituted by a party to enforce or interpret this Agreement, venue shall lie in Klamath County, Oregon. Such venue is exclusive.

15. Modification. This Agreement may not be amended or modified except by written agreement executed by the parties affected thereby, and recorded in the real property records of Klamath County, Oregon.

16. Pronouns. As the context may require in this Agreement, the use of any gender (male, female or neuter) shall include any other gender, and the singular shall include the plural and the plural the singular. As used in this Agreement, the term "person" includes individual, sole proprietorship, partnership, joint venture, trust, corporation, limited

liability company, association or any other entity or agency.

17. Captions. The captions heading the sections and subsections of this Agreement are inserted for convenience of reference only, and are not to be used to define, limit, construe or describe the scope or intent of any term, provision or section of this Agreement.

18. Exhibits. Each exhibit attached to and referred to in this Agreement is by this reference incorporated in this Agreement.

19. Integration. THIS AGREEMENT CONTAINS THE FINAL AND EXCLUSIVE AGREEMENT AND UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER OF IT, AND SUPERSEDES ALL PRIOR AND CONTEMPORANEOUS AGREEMENTS, ORAL OR WRITTEN, EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE ARE NO PROMISES, REPRESENTATIONS, AGREEMENTS OR UNDERSTANDINGS, ORAL OR WRITTEN, AMONG THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

20. Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21. Approval and Authority. This Agreement has been properly approved by ROGUE and the undersigned have proper authority to execute this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement on the date first above written.

ROGUE AGGREGATES, INC., an Oregon corporation

By William D. Lamm  
Its V. Pees, Gen. Mgr.

Frank H. Wallace  
Frank Wallace

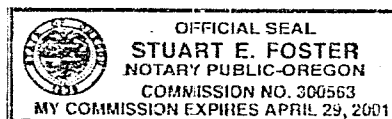
Peggy Wallace  
Peggy Wallace

Randy Wallace  
Randy Wallace

STATE OF OREGON )  
County of Tillamook )

ss.

This instrument was acknowledged before me on March 26, 1998, by William D. Leavins as Vice President of Rogue Aggregates, Inc.



[Signature]  
Notary Public for Oregon

STATE OF OREGON )  
County of Tillamook )

ss.

Personally appeared before me the above-named Frank Wallace who acknowledged the foregoing instrument to be his voluntary act and deed this 26 day of March, 1993.



[Signature]  
Notary Public for Oregon

STATE OF OREGON )

County of Jackson )

ss.

Personally appeared before me the above-named Peggy Wallace who acknowledged the foregoing instrument to be her voluntary act and deed this 26 day of March, 1998.



[Signature]  
Notary Public for Oregon

STATE OF OREGON )

County of Jackson )

ss.

Personally appeared before me the above-named Randy Wallace who acknowledged the foregoing instrument to be his voluntary act and deed this 26 day of March, 1998.



[Signature]  
Notary Public for Oregon

Exhibit "A"

Parcels One and Two of Land Partition 30-94 situated in Section 32 Township 40 South, Range 10 East of the Willamette Meridian, and Section 5 and 8 Township 41 South, Range 10 East of the Willamette Meridian.

Save and except the following the following parcels:

Parcel A:

A TRACT OF LAND BEING A PORTION OF PARCEL 2 OF "LAND PARTITION 30-94". SITUATED IN THE N1/2 NW1/4 SE1/4 OF SECTION 5, T41S, R10EWM, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE C-E 1/16 CORNER OF SAID SECTION 5, BEING THE NORTHERLY CORNER COMMON TO PARCELS 2 AND 3 OF SAID "LAND PARTITION 30-94"; THENCE S89°59'W, ALONG THE BOUNDARY OF SAID PARCEL 2, 732.55 FEET; THENCE S45°01'E 660.44 FEET; THENCE N89°59'E 271.15 FEET TO A POINT ON THE EAST LINE OF SAID PARCEL 2; THENCE N00°42'15"W, ALONG THE SAID EAST LINE, 467.03 FEET TO THE POINT OF BEGINNING, CONTAINING 5.38 ACRES, WITH BEARINGS BASED ON "LAND PARTITION 30-94" (R.O.S. 5709) ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.



Parcel B:

A TRACT OF LAND BEING A PORTION OF PARCEL 2 OF "LAND PARTITION 30-94", SITUATED IN THE SE1/4 NW1/4 OF SECTION 5, T41S, R10EWM, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER 1/4 CORNER OF SAID SECTION 5; THENCE N00°37'30"W, ALONG THE EAST LINE OF SAID PARCEL 2, 365.57 FEET TO A POINT ON THE NORTHEASTERLY LINE OF A 40 FOOT WIDE NON-EXCLUSIVE EASEMENT (AS SHOWN ON SAID "LAND PARTITION 30-94"); THENCE, ALONG THE SAID NORTHEASTERLY LINE, N53°20'46"W 119.95 FEET AND N48°07'32"W 767.45 FEET; THENCE SOUTH 949.62 FEET TO A POINT ON THE EAST-WEST CENTER SECTION LINE OF SAID SECTION 5; THENCE N89°59'E 671.67 FEET TO THE POINT OF BEGINNING, CONTAINING 10.00 ACRES, WITH BEARINGS BASED ON "LAND PARTITION 30-94" (R.O.S. 5709) ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.

Exhibit "B"

## Parcel One:

A TRACT OF LAND SITUATED IN THE S1/2 NE1/4 OF SECTION 5, T41S, R10EWM, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST 660.00 FEET OF THE SAID S1/2 NE1/4 OF SECTION 5, CONTAINING 20 ACRES, MORE OR LESS.

## Parcel Two:

Parcel 3 of Land Partition 30-94 situated in Section 32 Township 40 South, Range 10 East of the Willamette Meridian, and Section 5 and 8 Township 41 South, Range 10 East of the Willamette Meridian.

## Save and except:

A TRACT OF LAND BEING A PORTION OF PARCEL 3 OF "LAND PARTITION 30-94", SITUATED IN THE N1/2 NE1/4 SE1/4 OF SECTION 5, T41S, R10EWM, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE C-E 1/16 CORNER OF SAID SECTION 5 AND BEING THE NORTHWEST CORNER OF SAID PARCEL 3; THENCE N89°59'E, ALONG THE NORTH LINE OF SAID PARCEL 3, 668.5 FEET, MORE OR LESS, TO A POINT FROM WHICH THE EAST 1/4 CORNER OF SAID SECTION 5 BEARS N89°59'E 660.00 FEET; THENCE S44°59'W 660.44 FEET; THENCE S89°59'W, PARALLEL TO THE SAID NORTH LINE, 195.85 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL 3; THENCE N00°42'15"W 467.03 FEET TO THE POINT OF BEGINNING, CONTAINING 4.63 ACRES, MORE OR LESS, WITH BEARINGS BASED ON "LAND PARTITION 30-94" (R.O.S. 5709) ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.

1. 80 acres more or less situated in Klamath County, Oregon, more particularly described as follows:

Parcel A

A TRACT OF LAND BEING A PORTION OF PARCEL 3 OF "LAND PARTITION 30-94", SITUATED IN THE N1/2 NE1/4 SE1/4 OF SECTION 5, T41S, R10EW, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE C-E 1/16 CORNER OF SAID SECTION 5 AND BEING THE NORTHWEST CORNER OF SAID PARCEL 3; THENCE N89°59'E, ALONG THE NORTH LINE OF SAID PARCEL 3, 668.5 FEET, MORE OR LESS, TO A POINT FROM WHICH THE EAST 1/4 CORNER OF SAID SECTION 5 BEARS N89°59'E 660.00 FEET; THENCE S44°59'W 660.44 FEET; THENCE S89°59'W, PARALLEL TO THE SAID NORTH LINE, 195.85 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL 3; THENCE N00°42'15"W 467.03 FEET TO THE POINT OF BEGINNING, CONTAINING 4.63 ACRES, MORE OR LESS, WITH BEARINGS BASED ON "LAND PARTITION 30-94" (R.O.S. 5709) ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.

Parcel B

A TRACT OF LAND BEING A PORTION OF PARCEL 2 OF "LAND PARTITION 30-94", SITUATED IN THE N1/2 NW1/4 SE1/4 OF SECTION 5, T41S, R10EW, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE C-E 1/16 CORNER OF SAID SECTION 5, BEING THE NORTHERLY CORNER COMMON TO PARCELS 2 AND 3 OF SAID "LAND PARTITION 30-94"; THENCE S89°59'W, ALONG THE BOUNDARY OF SAID PARCEL 2, 732.55 FEET; THENCE S45°01'E 660.44 FEET; THENCE N89°59'E 271.15 FEET TO A POINT ON THE EAST LINE OF SAID PARCEL 2; THENCE N00°42'15"W, ALONG THE SAID EAST LINE, 467.03 FEET TO THE POINT OF BEGINNING, CONTAINING 5.38 ACRES, WITH BEARINGS BASED ON "LAND PARTITION 30-94" (R.O.S. 5709) ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.

## PARCEL C

A TRACT OF LAND BEING A PORTION OF PARCEL 2 OF "LAND PARTITION 30-94", SITUATED IN THE SE1/4 NW1/4 OF SECTION 5, T41S, R10EWM, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER 1/4 CORNER OF SAID SECTION 5; THENCE N80°37'30"W, ALONG THE EAST LINE OF SAID PARCEL 2, 365.57 FEET TO A POINT ON THE NORTHEASTERLY LINE OF A 40 FOOT WIDE NON-EXCLUSIVE EASEMENT (AS SHOWN ON SAID "LAND PARTITION 30-94"); THENCE, ALONG THE SAID NORTHEASTERLY LINE, N83°28'46"W 119.95 FEET AND N48°07'32"W 767.45 FEET; THENCE SOUTH 949.62 FEET TO A POINT ON THE EAST-WEST CENTER SECTION LINE OF SAID SECTION 5; THENCE N83°59'E 571.67 FEET TO THE POINT OF BEGINNING, CONTAINING 10.20 ACRES, WITH BEARINGS BASED ON "LAND PARTITION 30-94" (R.O.S. 5709) ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.

## PARCEL D

A TRACT OF LAND SITUATED IN THE S1/2 NE1/4 OF SECTION 5, T41S, R10EWM, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF THE SAID S1/2 NE1/4 OF SECTION 5, EXCEPTING THEREFROM, THE EAST 660.00 FEET, CONTAINING 60 ACRES, MORE OR LESS.

SEGMENT A:

AN ACCESS EASEMENT 40 FEET IN WIDTH BEING IN PARCELS 1 AND 2 OF "LAND PARTITION 30-94", SITUATED IN THE E1/2 SW1/4 OF SECTION 32, T40S, R10EWM, AND THE E1/2 NW1/4 OF SECTION 5, T41S, R10EWM, KLAMATH COUNTY, OREGON, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID E1/2 NW1/4, FROM WHICH THE CENTER 1/4 CORNER OF SAID SECTION 5 BEARS S00°37'30"E 340.44 FEET; THENCE N53°20'46"W 136.08 FEET; THENCE N48°07'32"W 1000.40 FEET; THENCE N31°35'02"W 213.87 FEET; THENCE N22°05'27"W 709.43 FEET; THENCE N13°58'04"W 399 FEET, MORE OR LESS, TO A POINT 20 FEET EAST OF THE WEST LINE OF SAID E1/2 NW1/4; THENCE NORTHERLY, 20 FEET EAST AND PARALLEL TO SAID WEST LINE AND THE WEST LINE OF SAID E1/2 SW1/4 OF SECTION 32 TO BUESING ROAD. WITH BEARINGS BASED ON "LAND PARTITION 30-94" (R.C.S. 5709) ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.

SEGMENT B:

A 40 FOOT WIDE EASEMENT, ALONG AN EXISTING ROAD, FROM THE NORTH-SOUTH CENTER SECTION LINE TO THE EAST-WEST CENTER SECTION LINE OF SECTION 5, T41S, R10EWM, KLAMATH COUNTY, OREGON, 20 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

BEGINNING AT A POINT ON THE SAID NORTH-SOUTH CENTER SECTION LINE, FROM WHICH THE CENTER 1/4 CORNER OF SAID SECTION 5 BEARS S00°37'30"E 340.44 FEET; THENCE, ALONG THE ROAD CENTER LINE, S53°20'46"E 101.08 FEET, S40°15'30"E 275.12 FEET AND S47°25'57"E 103.52 FEET TO A POINT ON THE SAID EAST-WEST CENTER SECTION LINE, FROM WHICH THE SAID CENTER 1/4 CORNER BEARS S89°59'00"W 331.41 FEET.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of First American Title the 11th day of May A.D., 19 98 at 11:56 o'clock A. M., and duly recorded in Vol. M98 of Deeds on Page 15906.

Bernetha G. Letsch, County Clerk

FEE \$95.00

By Kathleen Roer