

MTC 50885

**EASEMENT AND MAINTENANCE AGREEMENT**

PARTIES: ALBERTS DEVELOPMENT, L.L.C. ("Grantor")

AND: TASA TAPA, L.L.C. ("Grantee")

**RECITALS**

A. Grantor is the fee owner of the Real Property commonly referred to as Map No. 24-07-17C, tax lot 900, as delineated and described on the attached Exhibit "A" (the "Property").

B. Grantee is the fee owner of the adjacent real property, commonly referred to as Map No. 24-07-20, tax lot 300, as delineated and described on the attached Exhibit "B".

C. Grantee desires to cross Grantor's Property with a roadway easement for the purpose of accessing Grantee's property.

D. Grantor and Grantee now come together to enter this Easement and Maintenance Agreement on the terms and conditions set forth herein.

**AGREEMENT**

1. **Consideration.** In consideration of the sum of Twenty Thousand Dollars (\$20,000.00), receipt of which is hereby acknowledged, Grantor conveys to Grantee, his heirs, successors and assigns, a perpetual nonexclusive easement to use a strip of land 30 feet wide across the Real Property of Grantor, as delineated on the attached Exhibit "C".

2. **Terms of Easement.**

2.1 The Grantee, its successors, invitees, and assigns shall use the easement for access road purposes only (excluding heavy hauling) for access to the property described in the attached Exhibit "B" and in conjunction with such use may construct, reconstruct, maintain and repair a road thereon.

2.2 Grantor reserves the right to use, construct, reconstruct and maintain the road located upon the easement strip for any of its purposes, without limitation. Grantor may grant use rights for use to third parties.

2.3 Grantor reserves the right to relocate the road at any time and in such case shall reconstruct the road at such new location in as good

or better condition as existed at the prior location. If the road is relocated, Grantor may record an instrument indicating the relocated road centerline and such instrument shall serve to amend this easement and eliminate any right of Grantee in the original easement.

- 2.4 Grantee agrees to indemnify and defend Grantor from any loss, claim or liability to Grantor arising in any manner out of Grantee's use of the easement. Grantee shall pay Grantor for any property of Grantor's damaged by Grantee's use of this easement. Grantee assumes all risk arising out of its use of the easement and Grantor shall have no liability to Grantee or others for any condition existing thereon.
- 2.5 This easement is appurtenant to the Real Property owned by Grantee as described in Exhibit "B"; however, in the event of any subdivision or sale of any portion of Grantee's property this easement shall remain appurtenant only to the largest remaining parcel of Grantee, and owners of the other parcels into which Grantee's property described below may be divided shall have no right to use of the easement.
- 2.6 This easement shall be perpetual; however, in the event that it is not used by Grantee for a period of three years, or if otherwise abandoned by Grantee, the easement shall automatically expire and Grantee shall upon request execute a recordable document evidencing such expiration.

3. **Acceptance.** Grantee accepts the grant of the easement on the terms specified herein and agrees to fulfill its obligations as set forth in this Agreement.

4. **Cooperation.** Grantor and Grantee shall cooperate so that each parties' rights and obligations under this Agreement shall cause a minimum of interference to the other parties' rights. In the case of interference, Grantor's rights shall prevail.

5. **Maintenance and Repair.** Grantor and Grantee shall each be responsible for the payment of 50% of the cost of construction, maintenance, repair, and reconstruction of the easement. In the case of a dispute over these responsibilities, either party may initiate the development of an additional Maintenance Agreement between the parties.

6. **Real Property Taxes.** Grantor and its successors and assigns shall pay, when due, all real property taxes, assessments or other charges against the Property to which it holds fee title.

7. **Breach of Obligations.** In the event either party shall fail to perform its obligations under this Agreement, the other party shall be entitled to require such performance by suit for specific performance or, where appropriate, through injunctive relief. Such remedies shall be in addition to any other remedies afforded under Oregon law and those rights of cure and reimbursement specifically granted under this Agreement.

8. **Attorney Fees.** If suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this agreement or to interpret or enforce any rights hereunder, the prevailing party shall be entitled to recover its attorney fees, paralegals', accountants', and other experts', fees and all other fees, costs, and expense actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

9. **Binding Effect.** This Agreement is binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, and assigns.

10. **Modification.** With the exception of the relocation of the easement, this agreement may not be modified except by a written agreement executed by all parties.

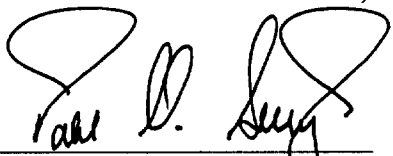
11. **Jurisdiction and Venue.** The parties agree that jurisdiction for any dispute or claim raised under this Agreement or proceeding brought to interpret the Agreement shall lie solely in the State of Oregon, with venue in Lane County.

12. **Entire Agreement.** This Agreement constitutes a full and final expression by the parties and supersedes all prior oral or written negotiations and agreements. All the terms and provisions of this Agreement shall have survived the closing transaction.

DATED this 15<sup>th</sup> day of May, 2000.

GRANTOR:

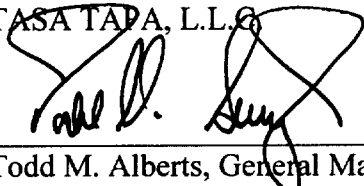
ALBERTS DEVELOPMENT, L.L.C.



Todd M. Alberts, General Manager

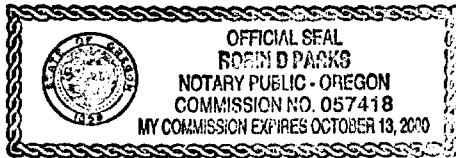
GRANTEE:

TASA TAPA, L.L.C.

  
 Todd M. Alberts, General Manager

State of Oregon        )  
                                   ) ss.  
 County of Lane        )

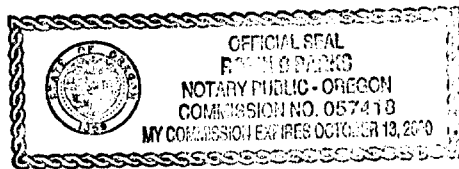
The foregoing instrument was acknowledged before me on 5/17, 2000  
 by Todd M. Alberts, General Manager of Grantor, as his voluntary act and deed.



  
 Notary Public for Oregon

State of Oregon        )  
                                   ) ss.  
 County of Lane        )

The foregoing instrument was acknowledged before me on 5/17, 2000  
 by Todd M. Alberts, General Manager of Grantee, as his voluntary act and deed.




  
 Notary Public for Oregon

EXHIBIT "A"

39061

## Description of Property

A portion of the SW $\frac{1}{4}$  of Section 17, Township 24 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

All of that portion of the SW $\frac{1}{4}$  of Section 17, Township 24 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, situated on the Southwesterly side of the Southwesterly line of Highway right of way of Oregon State Highway 58, EXCEPT a rectangular portion commencing at a point where the North-South center line of said Section 17 intersects the Southwesterly line of the highway right of way of Oregon State Highway 58; thence along said Southwesterly line of said right of way in a generally Northwesterly direction a distance of 850 feet to a point which is the true point of beginning; thence at right angles to said highway right of way and in a generally Southwesterly direction 250 feet to a point; thence at right angles to said last course and in a generally Northwesterly direction a distance of 175 feet to a point; thence at right angles to said last course and in a generally Northeasterly direction a distance of 250 feet, more or less, to the said Southwesterly right of way line of said Oregon State Highway 58; thence along said Southwesterly line of said right of way in a generally Southeasterly direction a distance of 175 feet, more or less, to the point of beginning.

State of Oregon, County of Klamath  
Recorded 9/30/99, at 3:03 a.m.  
In Vol. M99 Page 39060  
**Linda Smith,**  
County Clerk      Fee \$ 35.00

**EXHIBIT "B"**

The NW1/4 NW1/4, SW1/4 NW1/4 and the NE1/4 NW1/4 of Section 20, Township 24 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon;

EXCEPTING THEREFROM the following;

Beginning at a point 600 feet West of the quarter corner between Section 17 and Section 20, thence South 110 feet; thence West 396 feet; thence North 110 feet; thence East 396 feet to the point of beginning, being in the NE quarter of the NW quarter (NE1/4 of NW1/4) of Section 20 in Township 24 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon.

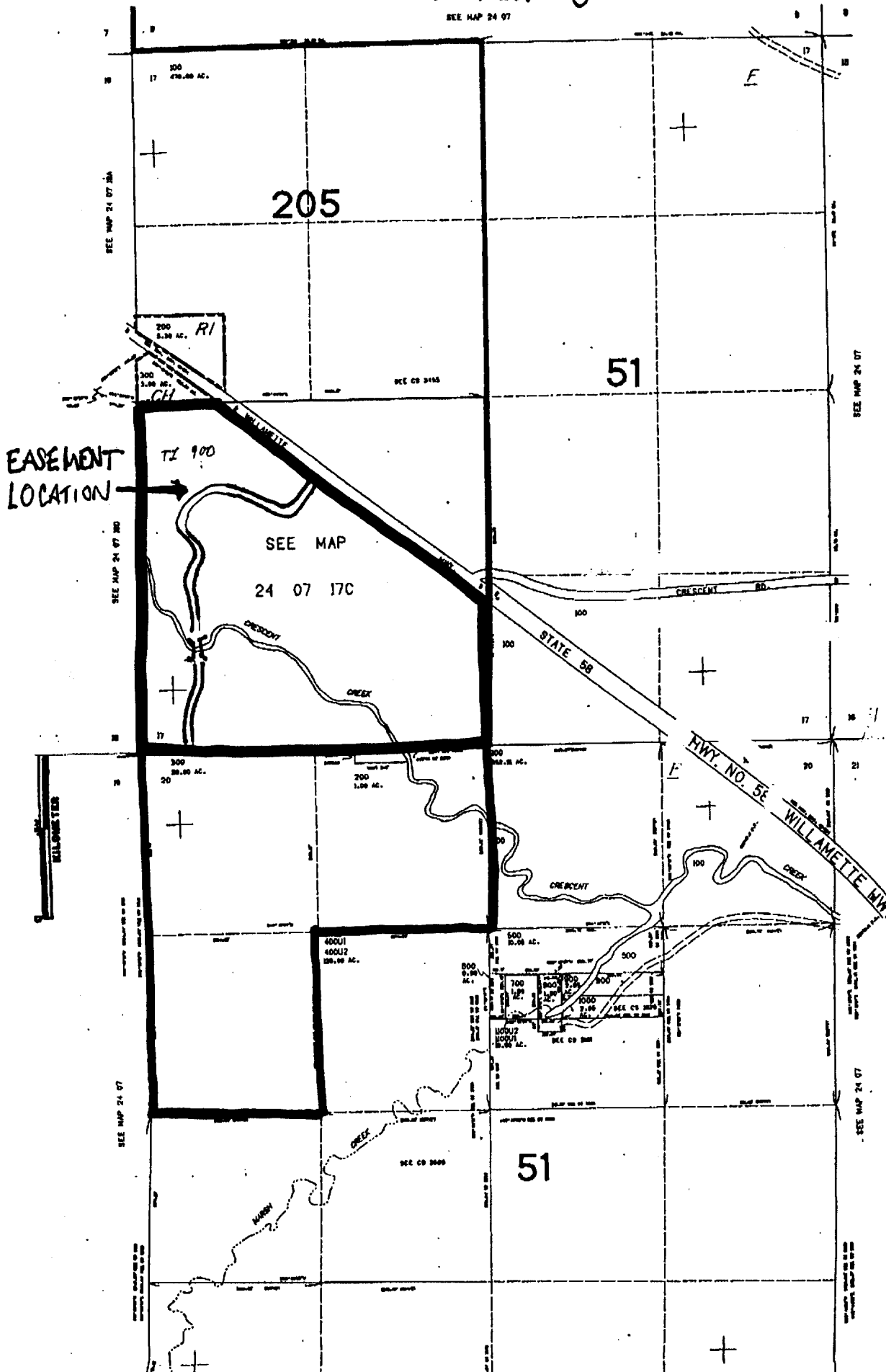
THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY.

KLAMATH COUNTY

EXHIBIT "C"

SEE MAP 24 07

18365



State of Oregon, County of Klamath  
Recorded 05/19/00, at 2:24 p.m.  
In Vol. M00 Page 18354  
Linda Smith,  
County Clerk Fees \$1<sup>00</sup>