

# DRAINAGE AND IRRIGATION EASEMENTS PUMP AND MAINLINE JOINT USE AGREEMENT

DOUGLAS J. PUCKETT and TYANN C. PUCKETT are the owners of the real property described in exhibit "A" attached hereto and of LOTS 1 and 2, Klamath County Partition #LP 20-98 and that certain real property located between such Lots 1 and 2 and the Weyerhaeuser Road.

**DRAINAGE AND IRRIGATION WATER DELIVERY:** It is recited that there is a drainage and irrigation delivery system consisting of dike with headgate at the Klamath River, concrete structure including two drain lift pumps of 7 1/2 horse power and 5 horse power, dam and headgate located near the Weyerhaeuser Road. Such system drains water to the Klamath River during times of winter and other runoff, including accepting drainage from upland of the property. Such system also provides irrigation delivery from the Klamath River to benefit the real property described in Exhibit "A" and to benefit LOTS 1 and 2 of such #LP 20-98 and that certain real property located between such Lots 1 and 2 and the Weyerhaeuser Road. It is recited that there presently exist and may exist in the future certain pumps and other structures and pumps for irrigation of lands not related to this agreement.

**PUMP AND MAIN LINE FACILITIES:** It is recited that such Lots 1 and 2 and that certain real property located between such Lots 1 and 2 and on the Weyerhaeuser Road presently benefit from pump and pressure main line facilities to be jointly owned and maintained for the benefit of the real property benefited by such facilities.

Therefore, the undersigned owners and developers do hereby declare that the following easements and restrictions accompanying said easements shall become and hereby are made a part of the conveyances, leases, encumbrances and rentals of such real property as stated herein within said real property and that the following easements and its conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof and shall inure to the benefit of each owner thereof as limited and stated herein:

The undersigned declare as follows:

For purposes of this agreement, "North Parcel" shall include such Lot 1 of Klamath County Land Partition #LP 20-98 and the real property described in Exhibit "C" attached hereto, and "South Parcel" shall include such Lot 2 of Klamath County Land Partition #LP 20-98 and the real property described in Exhibit "D" attached hereto.

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## **A. DRAINAGE AND WATER DELIVERY.**

1. EASEMENTS FOR DRAINAGE AND DELIVERY: Easements are hereby created to burden and benefit the real property described in exhibit "A" attached hereto and to burden and benefit the North Parcel and the South Parcel.

2. LOCATION: The easement on the real property described in Exhibit "A" and on the South Parcel shall be located at the existing location of such ditch, dikes and other structures and facilities as above described and as generally marked on the map attached hereto as Exhibit "B."

3. USE: It is understood that the owners of the real property described in Exhibit "A" and the North Parcel and South Parcel may utilize the easements for purposes of drainage and irrigation water delivery.

4. INGRESS AND EGRESS: The owners of such lots have the right of ingress and egress to maintain and reconstruct such facilities subject to the provisions herein, including that it is anticipated that the owner of the real property described in Exhibit "A" shall be responsible for the maintenance and operation of the facilities, with reimbursement for certain items to be paid by the owners of the North Parcel and South Parcel as herein set forth. On the portion of the facilities which are located on the south of the Weyerhauser Road, such ingress and egress shall be limited to the easterly side of the ditch.

5. COMMON MAINTENANCE: The owner of the real property described in Exhibit "A" shall be responsible for overseeing the maintenance of the facilities, and for paying the costs of electricity for such drainage pumps. Owners of North Parcel shall reimburse said costs of maintenance and electricity by paying 25% of such costs and the owners of the South Parcel shall reimburse said costs of maintenance and electricity by paying 25% of such costs. The Owner of the real property described in Exhibit "A" shall send to the owners of the North Parcel and the South Parcel statements of costs for reimbursement at regular intervals and such owners shall promptly pay percentages to the owner of the real property described in Exhibit "A". It is recited that the owner of the real property described in Exhibit "A" shall be responsible for 50% of such maintenance and costs, the owners of North Parcel and the South Parcel shall each be responsible for 25% of such amounts.

## **B. JOINT USE AGREEMENT:**

6. JOINT USE: There is hereby created a joint use obligation and benefits agreed to for the operation and maintenance of the pump and pressure mainline which runs between such Lots 1 and 2 and which mainline also runs to the Weyerhauser Road. It is anticipated that separate owners shall be on the north side of such mainline, which shall include such Lot 1 and the real property described in Exhibit "C" (North Parcel) and on the south side of such mainline, which shall include such Lot 2 and the real property described in Exhibit "D" (South Parcel). Owners of the North Parcel and the South Parcel shall be responsible for the maintenance, replacement and utility costs associated with

such pump and mainline. In addition a joint easement is hereby created for the location and operation of such pump and mainline.

7. EASEMENT: The easement is for operation, maintenance and replacement of such pump and mainline. It benefits North Parcel and South Parcel. This joint use agreement easement and easement for pump and mainline shall not burden or benefit that certain real property described in Exhibit "A" attached hereto.

8. USE: It is understood that the owners of the South Parcel and the North Parcel may utilize the easements for purposes of pump operation and pressure irrigation water delivery. Presently such pump and mainline operates one line at a time and the North Parcel has located thereon two such lines and South Parcel has one such line. Presently such facility has capacity for one line. The parties agree to cooperate regarding the rotation of such use in a reasonable manner.

9. COMMON MAINTENANCE: The parties agree to maintain such pump and mainline, replace such items or portions thereof when needed and pay utility costs, assessments, personal property taxes, if any, on a shared bases between the owners of the North Parcel and the South Parcel prorated to actual use, or if the parties cannot agree then such costs shall be prorated on the ratio of 2/3 for owners of the North Parcel and 1/3 for the owners of the South Parcel.

#### **C. PROVISIONS COMMON TO ALL OF THE ABOVE EASEMENTS AND AGREEMENTS.**

10. RUNS WITH THE LAND: These easements shall run with the land. It is recognized that said easements burdens all real property as described and as limited herein and benefits all property as described and limited herein.

11. ARBITRATION: In the event that a dispute arises as regards the subject matter of this agreement, the parties agree to submit to arbitration where each party appoints one arbitrator. The three arbitrators shall decide the resolution of said dispute, and the parties shall be bound thereby. The costs of arbitration shall be borne equally by the parties.

12. ATTORNEY FEES: If suit or action is instituted to enforce any of the provisions of this Restriction, the party prevailing therein shall be entitled to recover from the other such sum as the Court may adjudge reasonable as attorney's fees therein, including any appeal thereof.

13. BINDING ON SUCCESSORS: This agreement is binding not only on the parties hereto, but on the heirs, successors, assigns and personal representatives of the parties hereto.

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WHEREFORE, THE OWNERS have hereunto set there hand this 6<sup>th</sup> day of July, ~~1999~~ 2000

Douglas J. Puckett

Tyann C. Puckett

STATE OF OREGON

] ss.

County of Klamath ]

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 2000, by DOUGLAS J. PUCKETT and TYANN C. PUCKETT.

Lisa Weatherby

Notary Public for Oregon

My Commission expires: 11/20/2003



PARCEL I:

All that portion of Section 31, T.39 S., R.8 E., W.M. lying northeasterly of the Klamath River and southeasterly and southwesterly of the easterly and southerly right-of-way of Oregon State Highway No. 66 as the same is presently located and constructed. Excepting therefrom the portion of said real property lying northerly of Weyerhaeuser road.

PARCEL II:

A portion of the ENE-NE $\frac{1}{4}$ , NE $\frac{1}{4}$ -SE $\frac{1}{4}$ , and NW $\frac{1}{4}$ -SE $\frac{1}{4}$  of Section 31, T.39 S., R.8 E., W.M. more particularly described as follows:

Beginning at the intersection of Old Klamath Falls-Ashland Highway and the new Highway as now located; thence Northeasterly along the Northerly right of way line of the new Klamath Falls-Ashland Highway to its intersection with the Southerly right of way line of the Clover Creek County Road; thence Northwesterly along said Southerly line to its intersection with the Southerly right of way line of the Old Highway; thence Southwestwardly along said Southerly line to the point of beginning. Excepting therefrom the portion of said real property lying northerly of Weyerhaeuser road.

PARCEL III:

All that portion of Section 6, T.40 S., R.8 E., W.M. lying northerly of the Klamath River. Excepting therefrom the portion of said real property lying northerly of Weyerhaeuser road.

PARCEL IV:

A portion of Lot 9, Section 5, T.40 S., R.8 E., W.M. described as follows:

Beginning at the Northwest Corner of Section 5, T.40 S., R.8 E., W.M. which point is also the Northwest corner of Lot 9; thence South along the west line of Section 5 to the northerly bank of the Klamath River; thence S 84° 30' E 1044.8 foot to a point; thence W 4° W 1063.7 foot, more or less, to the North boundary of Section 5; thence West along the North boundary of Section 5 to the point of beginning.

EXCEPTING THEREFROM all easements and/or rights-of-way of record or apparent on the premises with specific reference being made to the right-of-way of the Weyerhaeuser Company haul road.

FURTHER EXCEPTING Therefrom all that portion lying West or North of Highway 66, and FURTHER EXCEPTING

A parcel of land situated in T39S, R8E, Section 31 and T40S, R8E, Section 6 more particularly described as follows:

Beginning at a point on the Easterly right of way of Highway 66 (Green Springs Highway), from which the Southeast corner of said Section 31 bears S78°32'17"E 4025.34 feet, thence from said point of beginning Northeasterly along the Easterly right of way line of said Highway 66 the following two courses:

N31°08'57"E 976.14 feet, thence along the arc of a 1392.40 feet radius curve to the right (A = 06°28'00" chord = N34°22'57"E 157.07 feet) 157.15 feet, thence leaving said Easterly right of way line of said Highway 66 S44°00'11"E 761.63 feet to a 5/8" iron pin, thence S32°44'20"E 358.44 feet to a 5/8" iron pin, thence S23°26'27"E 373.65 feet to a 5/8" iron pin, thence S21°11'48"E 1211.74 feet to a 5/8" iron pin, thence S66°45'23"W 809.13 feet to the Mean High Water Line of the Klamath River, thence Northwesterly along the Mean High Water Line to the said Klamath River the following ten bearings and distances: N20°05'12"W 184.88 feet, N27°59'43"W 310.22 feet, N23°33'53"W 480.79 feet, N29°34'22"W 222.65 feet, N41°35'28"W 128.40 feet, N52°33'18"W 300.06 feet, N54°45'49"W 193.57 feet, S74°27'22"W 47.87 feet to a 5/8" iron pin, N56°11'14"W 98.01 feet to a 5/8" iron pin, N38°04'07"W 184.13 feet to the point of beginning.

SUBJECT TO Reservations and restrictions of record, and also-

Excepting therefrom the portion of said real property lying northerly of the Weyerhaeuser road.

NOT TO SCALE

E36-3

Exhibit B

25136

Douglas Pickett  
F 480 T 746  
2000

mainline

T 746

PUMP

NEL

VISI

2/15.8

3/20 NH

1/21

ROAD

Access on East side

drain pump concrete station

32 32  
6 5  
NH

headgate on river

4/32.5

9/140

10/74.6 NH

T-1100

COMMENCING AT THE SECTION CORNER COMMON TO SECTION 31 AND 32, TOWNSHIP 39 SOUTH, RANGE 8 EAST, WILLAMETTE MERIDIAN, THENCE ALONG THE EAST LINE OF SAID SECTION 31, NORTH 02° 00' 07" WEST, 331.93 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF WEYERHAEUSER ROAD DESCRIBED IN DEED RECORDED AUGUST 30, 1996 IN VOLUME M96, PAGE 27024, THENCE ALONG THE NORTHERLY RIGHT OF WAY OF SAID WEYERHAUSER ROAD NORTH 63° 07' 00" WEST, 2151 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG THE NORTHERLY RIGHT OF WAY OF SAID WEYERHAUSER ROAD, NORTH 63° 07' 00" WEST, 1411 FEET MORE OR LESS TO THE EASTERLY RIGHT OF WAY OF HIGHWAY 66 (GREEN SPRINGS HIGHWAY); THENCE ALONG THE EASTERLY RIGHT OF WAY OF SAID HIGHWAY 66, 721.9 FEET MORE OR LESS TO THE NORTHWEST CORNER OF PARCEL 1 OF LAND PARTITION 20-98; THENCE LEAVING SAID HIGHWAY 66, ALONG THE SOUTHERLY PROPERTY LINE OF PARCEL 1 OF LAND PARTITION 20-98, SOUTH 47° 22' 52" EAST, 1241.9 FEET TO A COMMON CORNER OF PARCEL 1 AND PARCEL 2 OF SAID LAND PARTITION; THENCE SOUTH 39° 22' 32" WEST, 333 FEET MORE OR LESS TO THE POINT OF BEGINNING.

CONTAINING 15 ACRES MORE OR LESS.

Exhibit "C"

North

Hill

w/21

COMMENCING AT THE SECTION CORNER COMMON TO SECTION 31 AND 32, TOWNSHIP 39 SOUTH, RANGE 8 EAST, WILLAMETTE MERIDIAN; THENCE ALONG THE EAST LINE OF SAID SECTION 31, NORTH 02° 00' 07" WEST, 331.93 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF WEYERHAEUSER ROAD DESCRIBED IN DEED RECORDED AUGUST 30, 1996 IN VOLUME M96, PAGE 27024; THENCE ALONG THE NORTHERLY RIGHT OF WAY OF SAID WEYERHAUSER ROAD NORTH 63° 07' 00" WEST, 1391.26 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE ALONG THE NORTHERLY RIGHT OF WAY OF SAID WEYERHAUSER ROAD NORTH 63° 07' 00" WEST, 760 FEET MORE OR LESS; THENCE LEAVING SAID WEYERHAEUSER ROAD RIGHT OF WAY, NORTH 39° 22' 32" EAST, 333 FEET TO A CORNER COMMON TO PARCEL 1 AND PARCEL 2 OF LAND PARTITION 20-98; THENCE ALONG THE SOUTHERLY PROPERTY LINE OF SAID PARCEL 2 SOUTH 47° 22' 52" EAST, 676.04 FEET; THENCE ALONG THE SOUTHERLY PROPERTY LINE OF SAID PARCEL 2 SOUTH 12° 22' 34" WEST, 146.7 FEET TO THE POINT OF BEGINNING.

CONTAINING 4 ACRES MORE OR LESS.

State of Oregon, County of Klamath  
 Recorded 07/10/00, at 3:26 p m.  
 In Vol. M00 Page 25131  
**Linda Smith,**  
 County Clerk Fee \$ 56<sup>00</sup>

Exhibit **D**

HOY

South

w/#2