

AFTER RECORDING, RETURN TO: William M. Ganong
Attorney at Law
514 Walnut Avenue
Klamath Falls OR 97601

Vol MQ1 Page 6083

Aspen Title #01051199

TEMPORARY EASEMENT

THIS AGREEMENT is made as of February 8, 2001, by and between The City of Klamath Falls, Oregon, herein called the "City," and Modoc Lumber Co., an Oregon corporation, herein called "Modoc."

RECITALS:

A. Modoc is the owner of the real property in Klamath County, Oregon shown and described on Klamath County Partition No. 43-00.

B. Modoc has agreed to sell Parcel 2 as shown on said Partition No. 43-00 to the City of Klamath Falls, Oregon, for expansion of its sewage treatment plant. The City already owns land that adjoins the south, west, and north sides of said Parcel 2.

C. Modoc has granted an Option to Pine Cone, LLC., an Oregon Limited Liability Company ("Pine Cone") for the purchase by Pine Cone from Modoc of Parcels 1 and 3, as shown on said Partition No. 43-00.

D. In order to complete the partition of said parcels and the sale of said parcels to the City and Pine Cone, the City must create an easement on its land and a portion of Parcel 2 for access to said Parcel 3.

E. It is both parties' intent that this Easement be temporary in nature, terminating upon acquisition or provision by Modoc of other legal access across adjoining land currently owned by the Union Pacific Railroad.

Therefore, the parties, for fair and adequate consideration, covenant and agree as follows:

1. The City of Klamath Falls, Oregon does hereby grant, convey, and create a permanent, mutual, nonexclusive easement on, over, under, and across the real property described on Exhibit "A" attached hereto and incorporated herein by this reference.

2. The above-described easement shall be appurtenant to and benefit the respective ownerships of the parties, including any land hereafter acquired by the parties, their successors or assigns, which is contiguous to any of the real property currently owned by either of the parties.

3. The parties acknowledge that the easement, to the extent it has been developed, consists of a crude dirt road. Modoc, at its expense, shall mark the boundaries of the easement area by placing, and thereafter maintaining, permanent markers along the boundary lines, spaced 50 feet apart. The markers shall be set to discourage and deter vehicle traffic from meandering across Parcel 2.

4. The easement established by this Agreement may be used for vehicular and pedestrian ingress and egress and as a utility corridor. Provided, however, vehicular use shall be restricted to HD-10 loads or below to protect an existing utility line located in the easement. No party's rights hereunder shall lapse as a result of the party's failure to use the easement.

5. The parties have made this Agreement in anticipation of the development of the land shown on the map of said Partition No. 43-00. It is probable that the easement established hereby will be developed to the standards, then existing, of the land development code(s) of the city, county, or other entity with jurisdiction. In the event said entity requires a wider or a narrower right of way, the easement established hereby shall be adjusted accordingly.

6. Any party may, at any time, improve any part or all of the easement established hereby. Provided, however, that the other party shall have no obligation to participate financially in any such improvements. Modoc and its successors in interest shall be solely responsible for the maintenance of said improvements.

7. Before commencing any improvement of the easement, the party performing the improvement or its contractor shall procure broad form public liability insurance with minimum combined limits of not less than \$1,000,000 and shall maintain said policy in force at all times. Said policy shall provide liability coverage for any act or omission relating to the improvement of the easement and to all activities, conditions, operations, and usages thereof. Said policy shall name the owners of the land on which the easement is located as additional insureds. Each party hereby agrees to indemnify and hold harmless the other parties from any liability and costs, including attorney's fees, arising out of the usage of the easement established hereby.

8. If a party is requested or required by an appropriate governmental jurisdiction to dedicate a right of way for public use or to dedicate a public road or street, each party shall promptly execute and deliver to such jurisdiction a deed conveying its respective portion of the easement for such purposes.

9. No party shall unreasonably curtail or impede use of the easement.

10. Modoc shall exercise reasonable efforts to acquire and provide other legal access to Parcel No. 3. At such time as Modoc has provided such other legal access, it shall promptly make, execute, and deliver to City its Quitclaim Deed or other recordable instrument releasing its easement rights created hereby. Modoc and its successors in interest shall be responsible for relocating the roadway and all utility lines installed by them from this Temporary Easement to the permanent access area.

11. In the event any 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.

12. In the event of any litigation arising under this Agreement, the prevailing party shall recover from the losing party the prevailing party's reasonable attorney fees at trial or on appeal as adjudged by the trial or appellate court.

13. The easement granted hereunder shall run with the land as to all property burdened and benefitted by such easement, including any division or partition of such property. The rights, covenants, and obligations contained in this Agreement shall bind, burden, and benefit each party's successors and assigns, lessees, mortgagees (or beneficiaries under a deed of trust).

MODOC LUMBER CO.

By: Thomas M. Shaw
Its Vice President

CITY OF KLAMATH FALLS, OREGON

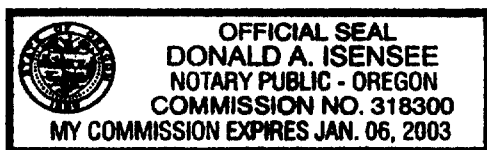
By: Joan
Its Mayor

By: Elisa Olson
Its City Recorder

STATE OF OREGON, County of Klamath) ss.

Personally appeared Thomas M. Shaw, in his capacity as Vice President of Modoc Lumber Co., and executed the foregoing instrument in such capacity.

Before me this 9TH day of February, 2001.



Donald A. Iensee
Notary Public for Oregon
My Commission Expires: 1-6-03

STATE OF OREGON, County of Klamath) ss.

Personally appeared Todd Kellstrom, in his capacity as Mayor and ~~Shirley Kappas~~ ^{Elisa Olson} in her capacity as Recorder for the City of Klamath Falls, Oregon, and executed the foregoing instrument in such capacities.

Before me this 13 day of February, 2001.



Pat Harris
Notary Public for Oregon
My Commission Expires: 9-21-2003

DESCRIPTION FOR TEMPORARY EASEMENT

A strip of land 60 feet in width situated in the SW $\frac{1}{4}$ of Section 33, Township 38 South, Range 9 East of the Willamette Meridian being more particularly described as follows:

Commencing at the $\frac{1}{4}$ corner common to Sections 32 and 33, said Township and Range; thence South $08^{\circ}10'15''$ East 2151.18 feet to a $\frac{1}{2}$ " pipe; thence East 241.21 feet to a $\frac{3}{8}$ " iron rod; thence North 237.00 feet to a 1" pipe; thence continuing North 50.00 feet to a $\frac{3}{4}$ " iron rod; thence North $32^{\circ}45'00''$ West 199.00 feet to a $\frac{1}{2}$ " pipe; thence North $34^{\circ}42'20''$ East 71.73 feet to a $\frac{1}{2}$ " pipe and the True Point of Beginning for this description; thence South $51^{\circ}03'30''$ East 362.58 feet to a 1" iron pipe; thence South $56^{\circ}44'22''$ East 56.37 feet to a 1" iron pipe; thence South $51^{\circ}01'40''$ East 58.59 feet to a 1" iron pipe; thence South $50^{\circ}39'00''$ East 525.21 feet to a 1" iron pipe; thence South $39^{\circ}21'00''$ West 60.00 feet; thence North $50^{\circ}39'00''$ West 525.01 feet; thence North $51^{\circ}01'40''$ West 55.40 feet; thence North $56^{\circ}44'22''$ West 56.35 feet; thence North $51^{\circ}03'30''$ West 361.13 feet; thence North $34^{\circ}42'20''$ East 60.16 feet to the point of beginning; with bearings based on C.S. 6445.

1000-84
12/23/00

State of Oregon, County of Klamath
Recorded 02/15/01, at 11:44 a.m.
In Vol. M01 Page 6083
Linda Smith,
County Clerk Fee\$ 26⁰⁰