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RECORDING COVER SHEET

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State of Oregon, County of Klamath
Recorded 02/02/05 11:02 a m
Vol M05 Pg 07616-22
Linda Smith, County Clerk
Fee \$ 5.00 # of Pgs 7

After Recording Return To:

Massini and Graeber
2101 Sierra Place
Ukiah, CA 95482

1. Name(s) of the Transaction(s):

Warranty Easement Deed

2. Direct Party (Grantor):

Fred Graeber and Tami Graeber, as tenants in common, as to an undivided 1/2 interest; Gerald A. Massini and Susan B. Massini, as Trustees of The Gerald A. Massini and Susan B. Massini Living Trust, dated September 22, 1993, as to an undivided 1/2 interest, all as tenants in common

3. Indirect Party (Grantee):

The United States of America, by and through the Commodity Credit Corporation

4. True and Actual Consideration Paid:

\$224,889.00

5. Legal Description:

please see attached

5/00
am

warranty easement deed

WETLANDS RESERVE PROGRAM
AGREEMENT NO. 66-0436-4-016

THIS WARRANTY EASEMENT DEED is made by and between **FRED GRAEBER AND TAMI GRAEBER, AS TENANTS IN COMMON, AS TO AN UNDIVIDED ½ INTEREST; GERALD A. MASSINI AND SUSAN B. MASSINI, AS TRUSTEES OF THE GERALD A. MASSINI AND SUSAN B. MASSINI LIVING TRUST, DATED SEPTEMBER 22, 1993, AS TO AN UNDIVIDED ½ INTEREST, ALL AS TENANTS IN COMMON** (hereafter referred to as the "Landowner"), Grantor(s), and **the UNITED STATES OF AMERICA**, by and through the Commodity Credit Corporation (hereafter referred to as the "United States"), Grantee. The Landowner and the United States are jointly referred to as the "Parties".

Witnesseth:

Purposes and Intent. The purpose of this easement is to restore, protect, manage, maintain, and enhance the functional values of wetlands and other lands, and for the conservation of natural values including fish and wildlife habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education. It is the intent of CCC to give the Landowner the opportunity to participate in the restoration and management activities on the easement area.

Authority. This easement deed acquisition is authorized by Title XII of the Food Security Act of 1985, as amended (16 U.S.C. §3837), for the Wetlands Reserve Program.

NOW THEREFORE, for and in consideration of the sum of Two Hundred Twenty Four Thousand and Eight Hundred and Eighty Nine Dollars (\$224,889.00) the Grantor(s), hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns, the Grantee, for in perpetuity, all rights, title and interest in the lands comprising the easement area described in Part I and appurtenant rights of access to the easement area, but reserving to the Landowner only those rights, title, and interest expressly enumerated in Part II. It is the intention of the Landowner to convey and relinquish any and all other property rights not so reserved. This easement shall constitute a servitude upon the land so encumbered; shall run with the land in perpetuity; and shall bind the Landowner, (the Grantor(s)), their heirs, successors, assigns, lessees, and any other person claiming under them.

SUBJECT, however, to all valid rights of record, if any.

PART I. Description of the Easement Area. The lands encumbered by this easement deed, referred to hereafter as the easement area, are described below:

EXHIBIT A

PART II. Reservations in the Landowner on the Easement Area. Subject to the rights, title, and interest conveyed by this easement deed to the United States, the Landowner reserves:

- A. Title. Record title, along with the Landowner's right to convey, transfer, and otherwise alienate title to these reserved rights.
- B. Quiet Enjoyment. The right of quiet enjoyment of the rights reserved on the easement area.
- C. Control of Access. The right to prevent trespass and control access by the general public.

- D. Recreational Uses. The right to undeveloped recreational uses, including hunting and fishing, and including leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time.
- E. Subsurface Resources. The right to oil, gas, minerals, and geothermal resources underlying the easement area, provided that any drilling or mining activities are to be located outside the boundaries of the easement area.

PART III. Obligations of the Landowner. The Landowner shall comply with all terms and conditions of this easement, including the following:

- A. Prohibitions. Unless authorized as a compatible use under Part IV, it is expressly understood that the rights to the following activities and uses have been acquired by the United States and are prohibited of the Landowner on the easement area:
 - 1. haying, mowing, or seed harvesting for any reason;
 - 2. altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying the vegetative cover;
 - 3. dumping refuse, wastes, sewage, or other debris;
 - 4. harvesting wood products;
 - 5. draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices;
 - 6. diverting or causing or permitting the diversion of surface or underground water into, within, or out of the easement area by any means;
 - 7. building or placing buildings or structures on the easement area;
 - 8. planting or harvesting any crop; and
 - 9. grazing or allowing livestock on the easement area.
- B. Noxious Plants and Pests. The Landowner is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and local laws. A plan to control noxious weeds and pests must be approved in writing by CCC prior to implementation by the Landowner.
- C. Fences. Except for establishment cost incurred by the United States and replacement cost not due to the Landowner's negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock shall be the responsibility of the Landowner.
- D. Taxes. The Landowner shall pay **any and all real property and other taxes and assessments**, if any, which may be levied against the land.
- E. Reporting. The Landowner shall report to CCC any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the easement area.

PART IV. Allowance of Compatible Uses by the Landowner.

- A. General. The United States may authorize, in writing and subject to such terms and conditions CCC may prescribe at its discretion, the use of the easement area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing.
- B. Limitations. Compatible use authorizations will only be made if such use is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area. CCC shall prescribe the amount, method, timing, intensity, and duration of the compatible use.

PART V. Rights of the United States. The rights of the United States include:

- A. **Management activities.** The United States shall have the right to enter unto the easement area to undertake, at its own expense or on a cost-share basis with the Landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area. The United States, at its own cost, may apply to or impound additional waters on the easement area in order to maintain or improve wetland and other natural values.
- B. **Access.** The United States has a right of reasonable ingress and egress to the easement area over the Landowner's property, whether or not the property is adjacent or appurtenant to the easement area, for the exercise of any of the rights of the United States under this easement deed. The authorized representatives of the United States may utilize vehicles and other reasonable modes of transportation for access purposes.
- C. **Easement Management.** The Secretary of Agriculture, by and through CCC may delegate all or part of the management, monitoring or enforcement responsibilities under this easement to any entity authorized by law that CCC determines to have the appropriate authority, expertise and resources necessary to carry out such delegated responsibilities. State or federal agencies may utilize their general statutory authorities in the administration of any delegated management, monitoring or enforcement responsibilities for this easement. The authority to modify or terminate this easement (16 U.S.C. §3837e(b)) is reserved to CCC in accordance with applicable law.
- D. **Violations and Remedies - Enforcement.** The Parties agree that this easement deed may be introduced in any enforcement proceeding as the stipulation of the Parties hereto. If there is any failure of the Landowner to comply with any of the provisions of this easement deed, the United States or other delegated authority shall have any legal or equitable remedy provided by law and the right:
 - 1. To enter upon the easement area to perform necessary work for prevention of or remediation of damage to wetland or other natural values; and,
 - 2. To assess all expenses incurred by the United States (including any legal fees or attorney fees) against the Landowner, to be owed immediately to the United States.

PART VI. General Provisions.

- A. **Successors in Interest.** The rights granted to the United States shall accrue to any of its agents, successors, or assigns. All obligations of the Landowner under this easement deed shall also bind the Landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them. All the Landowners who are parties to this easement deed shall be jointly and severally liable for compliance with its terms.
- B. **Rules of Construction and Special Provisions.** All rights in the easement area not reserved by the Landowner shall be deemed acquired by the United States. Any ambiguities in this easement deed shall be construed in favor of the United States to effect the wetland and conservation purposes for which this easement deed is being acquired. The property rights of the United States acquired under this easement shall be unaffected by any subsequent amendments or repeal of the Wetlands Reserve Program. If the Landowner receives the consideration for this easement in installments, the Parties agree that the conveyance of this easement shall be totally effective upon the payment of the first installment.

TO HAVE AND TO HOLD, this Warranty Easement Deed is granted to the United States of America and its successors and assigns for in perpetuity. The Landowner covenants that he, she, or they are vested with good title to the easement area and will warrant and defend the same on behalf of the United States against all claims and demands. The Landowner covenants to comply with the terms and conditions enumerated in this document for the use of the easement area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this easement deed.

Dated this 26th day of January, 2005.

Landowner(s): Gerald A. Massini Trustee
Gerald Massini

Susan B. Massini, Trustee
Susan Massini

Tami Graeber
Tami Graeber

Fred Graeber
Fred Graeber

ACKNOWLEDGMENT

STATE OF Oregon

COUNTY OF Klamath

On this 26th day of January, 2005 before me, the undersigned, a Notary Public in and for said State personally appeared as see below ~~known or proved~~ to me to be the persons whose names are subscribed to the within instrument and acknowledged that ~~he/she~~ they executed the same.

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

~~xx~~ Fred Graeber and Tami Graeber and Gerald A. Massini and Susan B. Massini as Trustees of the Gerald A. Massini and Susan B. Massini Living Trust, dated September 22, 1993



Kristi L. Redd
Notary Public for the State of Oregon
Residing at Klamath Falls, Oregon
My Commission Expires 11/16/2007

This instrument was drafted by the Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250-1400.

OMB DISCLOSURE STATEMENT

Public reporting burden for this collection of information is approximately sixty (60) minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture Clearance Office (OIRM), Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 057-0013), Washington, D.C. 20503.

Unofficial
Copy

EXHIBIT "A"
LEGAL DESCRIPTION

An easement located in vacated Tracts 48, 49 and a portion of Tracts 58 through 61 of Midland Tract, said easement also being Parcel 3 of County Survey No. 543, situated in Sections 35 and 36, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at the Northeast corner of vacated Tract 58, Midland Tract, said point also being the most Northeasterly corner of Parcel 3 as shown in County Survey No. 543, Klamath County Records; thence along the Easterly line of said Parcel 3, South $01^{\circ} 11' 44''$ West 768.78 feet; thence along the Southerly line of said Parcel 3, North $88^{\circ} 48' 38''$ West 5992.28 feet to Southwest corner of said Parcel 3 and the Easterly bank of the Klamath River; thence along the Westerly line of said Parcel 3 and the Easterly bank of the Klamath River the following five courses: North $02^{\circ} 03' 27''$ West 530.51 feet; thence North $06^{\circ} 59' 32''$ West 732.71 feet; thence North $15^{\circ} 43' 11''$ West 452.91 feet; thence North $08^{\circ} 57' 24''$ East 209.15 feet; thence North $16^{\circ} 31' 26''$ East 204.88 feet to the Northwest corner of said Parcel 3; thence leaving said Easterly bank of the Klamath River and along the Northerly line of said Parcel 3, South $88^{\circ} 47' 35''$ East 3577.07 feet to the Northeast corner of vacated Tract 49, Midland Tract; thence South $01^{\circ} 22' 17''$ West 1321.45 feet to the Northwest corner of vacated Tract 59, Midland Tract; thence South $88^{\circ} 47' 14''$ East 1319.69 feet to the Northeast corner of vacated Tract 59, Midland Tract; thence South $88^{\circ} 45' 25''$ East 1283.40 feet to the point of beginning.

EXCEPTING THEREFROM the following described Tract located within vacated Tract 59, Midland Tract, being more particularly described as follows:

Commencing at the Northwest corner of said Tract 59, Midland Tract; thence South $66^{\circ} 41' 23''$ East 1019.90 feet to the TRUE POINT OF BEGINNING; thence South $90^{\circ} 00' 00''$ East 208.71 feet; thence South $00^{\circ} 00' 00''$ East 208.71 feet to a point that bears North $81^{\circ} 37' 40''$ East 1456.62 feet from the Southeast corner of Parcel 3 of said County Survey No. 543, Klamath County Records; thence North $90^{\circ} 00' 00''$ West 208.71 feet; thence North $00^{\circ} 00' 00''$ West 208.71 feet to the point of beginning.

Basis of bearings is grid North of the Oregon State Plane Coordinate System, South Zone.

Tax Account No: 3908-00000-05700-000
Tax Account No: 3908-03600-00200-000

Key No: 492210
Key No: 502343