

2006-020132

Klamath County, Oregon



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10/06/2006 09:14:29 AM

Fee: \$61.00

After recording return to:

Cascade Timberlands                      EASEMENT AGREEMENT  
c/o ORM Management, LLC  
19245 Tenth Avenue NE, Poulsbo, WA 98370

This EASEMENT AGREEMENT (the "Agreement") is made and entered into as of the Sept., 14, 2006, by an among CASCADE TIMBERLANDS (OREGON) LLC, a Delaware limited liability company ("Cascade") and the individuals and trustees identified in the first column of Exhibit "B", attached hereto and incorporated herein (the "Lot Owner").

#### RECITALS

- A. Cascade is the owner of the real property in Klamath and Deschutes Counties, Oregon, legally described on the attached Exhibit "A" (the "Cascade Property").
- B. Each Lot Owner is the owner of the real property in Klamath County, Oregon, legally described opposite such Lot Owner's name on the attached Exhibit "B" (each individually being a "Lot").
- C. The Lot Owners wish to obtain and Cascade is willing to grant, an easement over an existing road on the Cascade Property for the purpose of accessing the Lots. The easement area consists of a strip of land ten (10) feet in width on each side of the centerline of such existing road, which centerline is described on the attached Exhibit "C" and as generally depicted on Exhibit "D" (the "Roadway").

#### AGREEMENT

THEREFORE, in consideration of the foregoing, the mutual covenants of the parties as set forth in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties, intending to be legally bound, agrees as follows:

1. Grant of Easement. Cascade hereby grants to each Lot Owner a perpetual, non-exclusive easement appurtenant to each Lot Owner's Lot(s) over the Roadway for the sole purposes of vehicular and pedestrian access to and from the Lot owned by such Lot Owner. Cascade reserves to itself and its successors and assigns the right (i) to go upon and use the Roadway at any and all times and for any purpose, and (ii) to grant the right to use the Roadway to other Persons (defined in Section 15) on such terms and conditions as Cascade may elect, so long as such use does not unreasonably interfere with the use of the Roadway by the Lot Owners as provided in this Agreement.

2. Relocation of Roadway. Cascade reserves the right to relocate the Roadway at any time and from time to time, so long as (a) the relocated Roadway has an equivalent or better road surface than the existing Roadway and (b) the new Roadway connects to Masten Road at or near the same location as the existing Roadway. In the event the Roadway is so relocated, Cascade shall be entitled to record an instrument describing the location of the Roadway as relocated and such instrument, which need not be executed or acknowledged by any Lot Owner, shall be deemed an amendment of this Agreement and shall automatically extinguish the rights of the Lot Owners hereunder with respect to the Roadway as previously located. Cascade shall give each Lot Owner notice of any relocation of the Roadway.
3. Reservation of Timber. Cascade hereby reserves all timber now or hereafter growing within the Roadway, including any relocation thereof pursuant to Section 2, but the purchaser of such Lot will then benefit from this Easement.
4. Use by Permittees. Each Lot Owner may permit its employees, agents, contractors, subcontractors, guests, invites, and permittees ("Permitted Users") to use the Roadway for purposes of vehicular and pedestrian access to and from such Lot Owner's Lot.
5. Compliance with Laws. In connection with its use of and activities on the Roadway, each Lot Owner shall at all times, and shall cause its Permitted Users at all times to, comply with all applicable legal requirements.
6. Maintenance and Condition of Roadway. Each Lot Owner and each Lot Owner's Permitted Users shall assume all risks associated with use of the Roadway pursuant to this Agreement. Cascade does not warrant or guarantee the current or future condition of the Roadway and shall be under no obligation whatsoever to the Lot Owners or to any other Person to repair any damage to the Roadway or to maintain the Roadway in a usable condition. No Lot Owner shall have any obligation to reimburse Cascade for any cost or expense it may incur in connection with such repair and maintenance of the Roadway as it may elect to undertake; provided, however, that in the event the Roadway is damaged as a result of use by any Lot Owner or any Lot Owner's Permitted Users in excess of normal usage for access purposes, Cascade shall be entitled to recover from such Lot Owner the actual and reasonable costs of repairing such damage. In the event Cascade fails to repair or maintain the Roadway, anyone or more of the Lot Owners shall be entitled to do so; provided, however, that Cascade shall have no liability whatsoever with respect to the costs of any such maintenance and repair. Any repair or maintenance

by any Lot Owners shall be undertaken in a good workmanlike fashion and in compliance with all applicable legal requirements.

7. No Public Dedication. The Roadway shall constitute a private way for all purposes. Nothing contained in this Agreement shall be construed as a gift or dedication of any portion of the Roadway to the general public or for any public use or purpose whatsoever, and no Lot Owner shall take any action which seeks to cause or could cause the conversion of the Roadway from a private way to a public way. Except to the extent expressly set forth herein, no right or benefit of any party hereunder shall inure to the benefit of any Person not a party hereto and no such third party shall be deemed a beneficiary of any of the provisions of this Agreement.
8. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors with respect to the Cascade property, in the case of Cascade, and the applicable Lot, in the case of each Lot Owner. A Lot Owner's sale, transfer, or other disposition of such Lot Owner's Lot shall automatically terminate and extinguish such Lot Owner's rights under this Agreement with respect to the Lot sold, transferred, or otherwise disposed of.
9. Waiver. Any party's failure to exercise, delay in exercising, or partial exercise of any right or remedy under this Agreement shall not constitute a waiver of that or any other right or remedy hereunder. A waiver of a breach of any provision of this Agreement shall not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself. No waiver of any provision of the Agreement shall be binding on a party unless it is set forth in writing and signed by such party.
10. Amendment. Except as set forth in Section 2 with respect to a relocation of the Roadway, this Agreement may not be amended or modified except by a written agreement signed by the parties.
11. Attorney's Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with this Agreement, or to interpret or enforce any rights or remedies hereunder, the prevailing party shall be entitled to recover its attorney's fees and all other fees, costs, and expenses 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.
12. Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable, then (i) such provision shall be enforceable to the fullest extent permitted by applicable law, and (ii) the validity and enforceability

of the other provisions of this Agreement shall not be affected and all such provisions shall remain in full force and effect.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon (without regard to the principles thereof relating to conflicts of laws).
14. Construction and Interpretation. The headings or titles of sections in this Agreement are intended for ease of reference only and shall have no effect whatsoever on the construction or interpretation of this Agreement. References herein to sections are to sections of this Agreement unless otherwise specified. Meaning of defined terms used in this Agreement are equally applicable to singular and plural forms of such defined terms. As used herein, (i) "Person" means any individual, partnership, corporation, limited liability company, trust, unincorporated association, or other organization, whether or not a legal entity, (ii) the term "Party" refers to a party to this Agreement, unless otherwise specified, (iii) the terms "hereof", "herein", "hereunder", and similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement, and (iv) the term "including" is not limiting and means "including without limitation".
15. Counterpart Execution. This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set above.

GRANTOR:

CASCADE TIMBERLANDS (OREGON) LLC  
a Delaware limited liability company

By: Olympic Resource Management LLC, its  
Manager

By:

Thomas M. King  
Title: Vice President & CFO

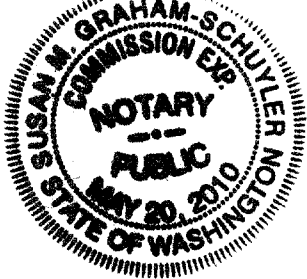
GRANTEE:

Harold Elliot  
HAROLD ELLIOT ~~X~~

State of Washington )  
 )ss  
County of Kitsap )

the foregoing instrument was acknowledged before me this 14<sup>th</sup> day of September, 2006 by Thomas M. Ringo, as Vice President and CFO of Olympic Resource Management LLC, as Manager of Cascade Timberlands (Oregon) LLC, a Delaware limited liability company.

Before me:  
Susan M. Graham-Schuyler



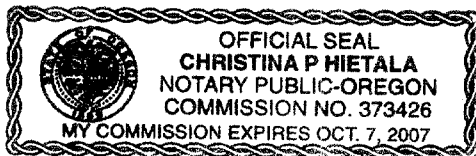
Susan M. Graham-Schuyler  
Notary Public for Washington  
My commission expires: 5/20/2010

State of Oregon )  
 )ss  
County of Deschutes )

On September, 25, 2006, personally appeared the above named Harold Elliot and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me: Christina P. Hietala

Christina P. Hietala  
Notary Public for Oregon  
My commission expires: 10/7/2007



**EXHIBIT "A"**

**TOWNSHIP 22 SOUTH, RANGE 09 EAST, W.M., DESCHUTES COUNTY, OREGON**

Section 35: SW1/4NE1/4; W1/2SE1/4; S1/2SE1/4

**TOWNSHIP 23 SOUTH, RANGE 09 EAST, W.M., KLAMATH COUNTY, OREGON**

Section 02: NW1/4NW1/4

Section 03: E1/2NE1/4; SW1/4NE1/4; NW1/4SE1/4; E1/2SW1/4

Section 10: E1/2NW1/4; NE1/4SW1/4; SE1/4

Section 11: SW1/4SW1/4

**EXHIBIT "B"**

*KE*

**Owner - Harold Elliott - Lots 9 and 10, Block 2 MAHN'S ACRES SUBDIVISION**

## **EXHIBIT "C"**

The portion of the centerline located in Deschutes County, Oregon is described as follows:

**BEGINNING** at a point approximately 330 feet East of the section corner of Sections 34 and 35, T22S, R9E, W.M., and Sections 2 and 3, T23S, R9E, W.M., thence Northeasterly on the GT-1 road to a point approximately 198 feet South of the N1/16 corner of the NW1/4SE1/4 Section 35, T22S, R9E, W.M.

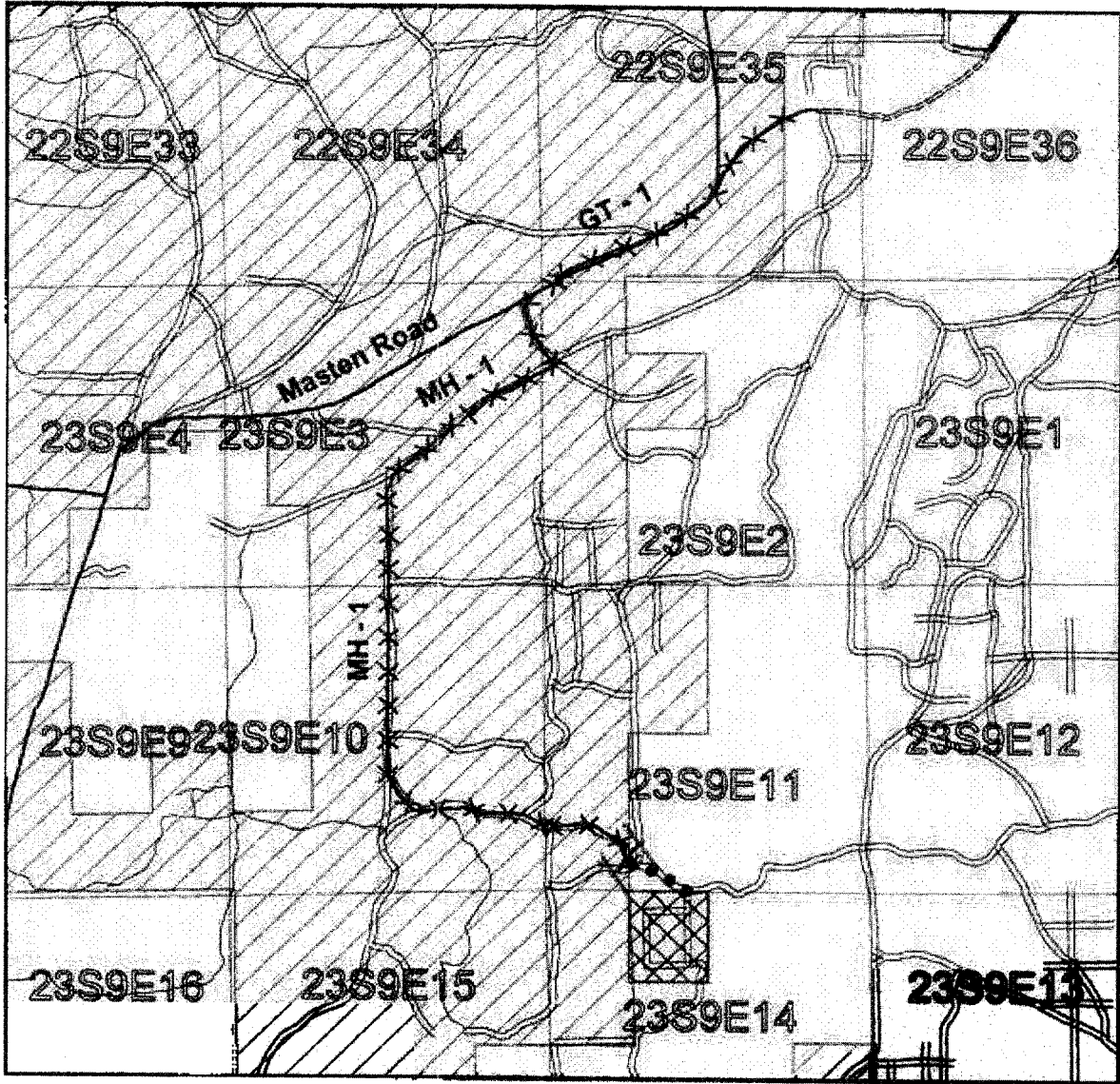
The portion of the centerline located in Klamath County, Oregon is described as follows:

**BEGINNING** at a point approximately 330 feet East of the section corner of Sections 34 and 35, T22S, R9E, W.M., and Sections 2 and 3, T23S, R9E, W.M.; thence Southwesterly approximately 792 feet to the intersection of Masten Road and the MH-1 road. From said intersection thence Southeasterly approximately 1,122 feet to an intersection located approximately 198 feet Southwest of the NW1/16 corner of the SW1/4NW1/4 of Section 2, T23S, R9E, W.M.

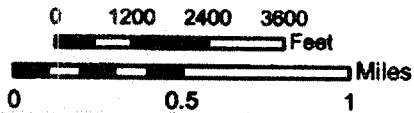
From said intersection Southwesterly and Southerly through said Section 2 and Section 3, T23S, R9E, W.M.; to the South quarter corner of said Section 3.

From the South quarter corner of said Section 3 thence South and West terminating at a point approximately 330 feet North of the SE1/16 corner of the SW1/4SW1/4 of Section 11, T23S, R9E, W.M.





## EXHIBIT "D"



<b>Legend</b>	Mahn Acres Lots	"O'Ryan Easement"
Cascade Property	"Roadway"	COUNTY
<b>CLASS</b>	FOREST ROAD	MAINLINE
4WD TRAIL	HWY	RAILROAD
		SPUR