

2007-014977

Klamath County, Oregon



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08/24/2007 09:07:47 AM

Fee: \$86.00

MTC 79134-KR

RECORDING COVER SHEET

THIS COVER SHEET HAS BEEN PREPARED
BY THE PERSON REPRESENTING THE
ATTACHED INSTRUMENT FOR RECORDING.
ANY ERRORS IN THIS COVER SHEET DO NOT
AFFECT THE TRANSACTION(S) CONTAINED
IN THE INSTRUMENT ITSELF.

After Recording, Return To:

United States of America, acting through the Commodity Credit Corporation
C/O Sandra Fife
1201 NE Lloyd Blvd., #900
Portland, OR 97232

1. Name(s) of the Transaction(s): Warranty Easement Deed
2. Direct Party (Grantor): Jespersen-Edgewood, Inc., an Oregon Corporation
3. Indirect Party (Grantee): United States of America, acting through the Commodity Credit Corporation
4. True and Actual Consideration Paid: \$5,584,250.00
5. Legal Description: See attached Exhibit "A"

804MT

Warranty Easement Deed

WETLANDS RESERVE PROGRAM AGREEMENT NO. 66-0436-6-134

THIS WARRANTY EASEMENT DEED is made by and between **Jespersen-Edgewood, Inc., an Oregon Corporation**, (hereafter referred to as the "Landowner"), Grantor(s), and **the UNITED STATES OF AMERICA**, by and through the Commodity Credit Corporation (CCC) (hereafter referred to as the "United States"), Grantee. The Landowner and the United States are jointly referred to as the "Parties". The acquiring agency of the United States is the Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

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 and their 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 Five Million Five Hundred and Eightyfour Thousand Two hundred and Fifty Dollars (\$ 5,584,250), the Grantor(s), hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns, the Grantee, forever, 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 on EXHIBIT A which is appended to and made a part of this easement deed.

TOGETHER with a right of access for ingress and egress to the easement area across adjacent or other properties of the Landowner. Such a right-of-way for access purposes is described in EXHIBIT B which is appended to and made a part of this easement deed.

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, unless activities within the boundaries are specified in accordance with the terms and conditions of EXHIBIT C.

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

- A. Prohibitions. Without otherwise limiting the rights of the United States acquired hereunder, it is expressly understood that the rights to the following activities and uses have been acquired by the United States and, unless authorized by the United States under Part IV, are prohibited of the Landowner on the easement area:
 - 1. haying, mowing, or seed harvesting for any reason;

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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;
 9. grazing or allowing livestock on the easement area; and
 10. disturbing or interfering with the nesting or brood-rearing activities of migratory birds.

- 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, upon a determination by CCC in the exercise of its discretion and rights, that the proposed 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. To the extent practical, the United States shall utilize the access identified in EXHIBIT B.
- 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.

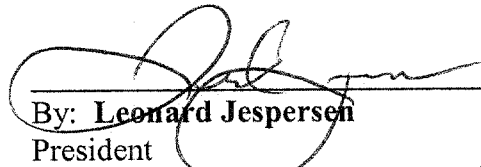
PART VII. Special Provisions.

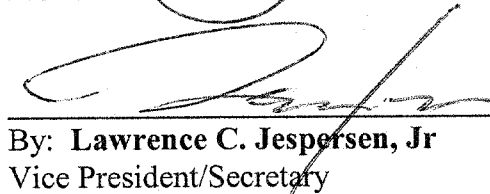
- A. The Grantor reserves all rights to groundwater.
- B. The grantor retains access to a well located in the northeast corner of the easement area and the ability to perform maintenance on the associated pump.
- C. By this Special Provision, the Parties agree that the United States acquires the rights to utilize all surface waters from the easement area for purpose of the Wetland Reserve Program and the Grantor may not utilize such surface waters for irrigation or any other purposes.

TO HAVE AND TO HOLD, this Warranty Easement Deed is granted to the United States of America and its assigns forever. 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 21st day of August, 2007.

Landowner(s): _____
Jespersen-Edgewood, Inc., an Oregon Corporation

 _____ *Pres*
By: **Leonard Jespersen**
President

 _____ *Vice President*
By: **Lawrence C. Jespersen, Jr**
Vice President/Secretary

ACKNOWLEDGMENT

STATE OF Oregon
COUNTY OF Klamath

On this 21st day of August, 2007, before me, the undersigned, a Notary Public in and for said State personally appeared **Leonard Jespersen, as President for Jespersen-Edgewood, Inc., an Oregon Corporation**, known or proved to me to be the person ☒ described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

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



Kristi L. Redd
Notary Public for the State of Oregon
Residing at Klamath County, 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.

ACKNOWLEDGMENT

STATE OF Oregon
COUNTY OF Klamath

On this 21st day of August, 2007, before me, the undersigned, a Notary Public in and for said State personally appeared **Lawrence C. Jespersen, Jr., as Vice President/Secretary for Jespersen-Edgewood, Inc., an Oregon Corporation**, known or proved to me to be the person ☒ described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

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



Kristi L. Redd
Notary Public for the State of Oregon
Residing at Klamath County, 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.

ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES
CONSERVATION SERVICE

The Natural Resources Conservation Service, an agency of the United State Government, hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.

UNITED STATES OF AMERICA

By: William B. White
Its: ASTC-Programs
Authorized Signatory for the NRCS

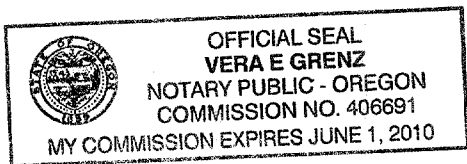
ACKNOWLEDGMENT

STATE OF OREGON

COUNTY OF MULTNOMAH

On this 17 day of August, 2007, before me, the undersigned, a Notary Public in and for said State personally appeared William B. White, as **Authorized Signer for United States of America, acting through the Commodity Credit Corporation** known or proved to me to be the person(s) described in and who executed the foregoing instrument, and acknowledged that he executed the same as HIS free act and deed.

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



Vera E Grenz
Notary Public for the State of Oregon
Residing at Portland, OR
My Commission Expires June 1, 2010

OMB DISCLOSURE STATEMENT

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0578-0013. The time required to complete this information collection is estimated to average 0.69 hours 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.

NONDISCRIMINATION STATEMENT

The United States Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (202) 720-5964.

SWAN LAKE WRP COMPLEX

Landowners: Jespersen Edgewood, Inc., James M. and Sharon Carroll Revocable Trust, Bar CL, Inc.,
and Matthew C. and Kimberly A. Biaggi and John M. Venable

County: Klamath

WRP Contract No.: Bar C-L (Lorenz) #66-0436-6-132
Biaggi-Venable #66-0436-6-133
Jespersion #66-0436-6-134
Carroll #66-0436-6-135

EXHIBIT "A" LEGAL DESCRIPTION

A Wetlands Reserve Program (WRP) Conservation easement over a parcel of land in Sections 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35 and 36, Township 37 South, Range 10 East of the Willamette Meridian, and Sections 1, 2, 3, 4, 10, 11 and 12, Township 38 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon; being a portion of that property conveyed to Jespersen Edgewood Inc., as described in Deed Volumes M73, page 4496, M77, page 872, M78, page 7073, M79, page 3600, M01, page 4869 and 2007, page 013406, Microfilm Records of Klamath County, Oregon; also a portion of that property conveyed to James M. Carroll and Sharon I. Carroll, as Trustees of the James and Sharon Carroll Revocable Trust dated September 29, 1994, as described in Deed Volume M01, page 67127, Microfilm Records of Klamath County, Oregon; also a portion of that property conveyed to Bar CL, Inc., Successor by merger to MTM, Inc., as described in Deed Volume 334, page 244, Deed Records of Klamath County, Oregon; and also a portion of that property conveyed to Matthew C. Biaggi and Kimberly A. Biaggi and John M. Venable, as described in Deed Volumes M94, page 36642 and M94, page 36652, Microfilm Records of Klamath County, Oregon. The easement is describes as follows:

Beginning at the section corner common to Sections 14, 15, 22 and 23, of said Township 37 South, Range 10 East; thence Southeasterly along the North line of said Section 23, South 88° 40' 49" East, 1291.98 feet; thence South 88° 33' 36" East, 1291.54 feet; thence South 88° 35' 08" East, 1291.64 feet to the E1/16 corner common to Sections 14 and 23; thence South 00° 47' 28" West, 1320.51 feet to the NE1/16 corner of Section 23; thence South 88° 45' 41" East, 1297.95 feet to the N1/16 corner common to Sections 23 and 24; thence South 00° 39' 19" West, 1317.88 feet to the 1/4 corner common to Sections 23 and 24; thence North 85° 50' 20" West, 519.99 feet; thence South 00° 57' 56" West, 294.70 feet; thence South 21° 34' 56" East, 257.29 feet; thence South 24° 07' 34" East, 247.66 feet; thence North 62° 56' 04" East, 360.50 feet; thence South 00° 41' 15" West, 757.32 feet to the S1/16 corner common to Sections 23 and 24; thence South 88° 29' 55" East, 1320.59 feet to the SW1/16 corner of Section 24; thence South 00° 41' 35" West, 1323.76 feet to the W1/16 corner common to Sections 24 and 25; thence South 88° 15' 53" East, 1317.29 feet to the 1/4 corner common to Sections 24 and 25; thence South 00° 31' 12" West, 2647.70 feet to the C1/4 corner of Section 25; thence South 88° 31' 04" East, 1314.03 feet to the CE1/16 corner of Section 25; thence South 00° 34' 16" West, 2641.80 feet to the E1/16 corner common to Sections 25 and 36; thence South 88° 46' 22" East, 1311.58 feet to the Section corner common to Sections 25 and 36 only, said Township 37 South, Range 10 East; thence Southwesterly and Southeasterly following the toe of slope of a dike in said Section 36, the following courses: South 59° 27' 59" West, 1566.25 feet; thence South 64° 20' 04" West 951.41 feet; thence South 16° 29' 50" West, 49.91 feet; thence South 18° 25' 42" East, 4234.35 feet;

Continued

(Legal Continued)

thence following the toe of slope of a dike in Sections 1 and 12, of said Township 38 South, Range 10 East, the following three courses: South $89^{\circ} 07' 18''$ East, 818.31 feet; thence South $00^{\circ} 46' 11''$ West, 5235.92 feet; thence South $39^{\circ} 40' 38''$ West, 3490.24 feet; thence following the center section line through Sections 12 and 11, North $89^{\circ} 13' 55''$ West, 8347.54 feet to the 1/4 corner common the Sections 10 and 11; thence, following the center section line through Section 10, North $89^{\circ} 24' 06''$ West, 5248.76 feet; thence Northwesterly along a fence in Section 10 the following two courses: North $08^{\circ} 58' 29'$ West, 190.16 feet; thence North $00^{\circ} 26' 26''$ East, 2476.41 feet to the Section corner common to Sections 3, 4, 9, and 10; thence North $01^{\circ} 16' 22''$ East, 1325.37 feet to the S1/16 corner common to Sections 3 and 4; thence North $89^{\circ} 33' 59'$ West, 2639.74 feet to the CS1/16 corner of Section 4; thence North $89^{\circ} 34' 12''$ West, 2639.86 feet to the S1/16 corner common to Sections 4 and 5; thence North $01^{\circ} 28' 42''$ East, 4001.81 feet, along the West line of Section 4, to the Northwest corner thereof; thence North $01^{\circ} 01' 55''$ East, 5334.32 feet along the West line of Section 33, Township 37 South, Range 10 East, to the Northwest corner thereof; thence, along a random line through Sections 28, 21, 22 and 15 the following twelve courses: North $02^{\circ} 07' 20''$ East, 5178.76 feet; thence South $89^{\circ} 36' 15''$ East, 352.93 feet; thence North $05^{\circ} 46' 51''$ East, 137.89 feet; thence South $89^{\circ} 02' 00''$ East, 2205.57 feet; thence North $00^{\circ} 43' 35''$ East, 74.54 feet; thence North $89^{\circ} 53' 07''$ East, 462.88 feet; thence North $01^{\circ} 23' 33''$ East, 232.28 feet; thence North $83^{\circ} 31' 24''$ West, 467.72 feet; thence North $00^{\circ} 45' 26''$ East, 3202.61 feet; thence South $89^{\circ} 33' 48''$ East, 2450.75 feet; thence North $42^{\circ} 58' 15''$ East, 3226.85 feet; thence South $73^{\circ} 24' 32''$ East, 2337.69 feet to the Point of Beginning.

EXHIBIT "B"
LEGAL DESCRIPTION

Ingress and egress to the above described easement is provided by an existing county maintained road named "Swan Lake Road," and public road, privately maintained, named "White Line Road" as shown on the WRP Map of Survey.