

MTC/396-9474

After Recording Return to:

Medford Land Company LLC  
P.O. Box 8158  
Medford, OR 97504

2008-009440

Klamath County, Oregon



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06/27/2008 11:42:20 AM

Fee: \$26.00

## ACCESS EASEMENT AND MAINTENANCE AGREEMENT

**THIS AGREEMENT FOR EASEMENT** is made between Medford Land Company LLC, as grantor ("Grantor"), and Medford Land Company LLC, as grantee ("Grantee")

### RECITALS

**A.** Grantor is the owner of certain real property commonly known as Section 21, Township 35 South, Range 11, Tax Lot 2400 ("Tax Lot 2400"), being located in Klamath County, Oregon, a more particular description being:

The Northwest one-quarter of the Northeast one-quarter of Section 21, Township 35 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

**B.** Grantee is the owner of certain real property commonly known as Section 21, Township 35 South, Range 11, Tax Lot 2500 ("Tax Lot 2500"), being located in Klamath County, Oregon, a more particular description being:

The Northeast one-quarter of the Northwest one-quarter and the East half of the Northwest one-quarter of the Northwest one-quarter of Section 21, Township 35 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

**C.** Grantor intends to convey Tax Lot 2400 to a third party and desires to enter into this Agreement in order to reserve certain rights for the benefit of Tax Lot 2500, including but not limited to the right of access.

### AGREEMENT

**NOW, THEREFORE**, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

**1. Access Easement:** Grantor grants and conveys to Grantee a twenty-five (25) foot wide non-exclusive easement for ingress/egress and the installation, maintenance and utilities over and across Tax Lot 2400 (the Easement). The Easement shall be used in a manner that shall not unreasonably disturb or interfere with the use of Tax Lot 2400.

**2. Duration:** The Easement granted herein is deemed appurtenant to the real properties described herein and it is the intent of the parties that the Easement is perpetual and shall run with the land. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. This Agreement shall be recorded in the Official Records of Klamath County, Oregon.

**3. Maintenance and Repair:** Except as otherwise provided herein, the parties agree to share equally the expense and duty of policing, cleaning and maintaining the Easement. The duty to police means, but is not limited to, the duty to keep the road free and clear of any obstacles or obstructions of any kind which would limit or impede the flow of vehicular traffic. The duty to clean means, but is not limited to, the duty to clear all rubbish or unsightly matters or material. The duty to maintain means to maintain the road in substantially the same condition as such road now is. In the event either party fails to pay their share of the expense relating to the aforesaid obligations, the other party may pay such expense and may collect from the nonpaying party the amount paid by the other party in excess of such party's contributive share, plus interest at the rate of fifteen percent (15%) per annum from the date of disbursement.

**4. Improvements:** Grantee shall have the right at Grantee's own expense to improve, widen, or resurface the existing road or construct a new road as required to maintain adequate access to and from Grantee's property. Notwithstanding any obligations for maintenance and repair set forth in this Agreement, each party, at their sole expense, shall be responsible for all costs incurred in improving the Easement to comply with any condition of approval and/or requirement associated with any land use approval and/or building permit granted on their respective property.

**5. Encumbrances:** The Easement is granted subject to all prior easements and encumbrances existing on Tax Lot 2400 upon the date of this Agreement.

**6. Cooperation:** The parties agree to cooperate and execute any and all documents

26 AMT

necessary to effectuate the terms of this Agreement. At the request of any party, or their successors in interest, the other party, or their successors in interest, hereto agree to execute such documents, statements and certificates to confirm or certify the existence of the Easement.

7. **Indemnification:** Grantee agrees to defend, indemnify and hold Grantor harmless from and against any and all losses, claims, demands, or other liabilities whatsoever arising out of such use of the Easement by Grantee, Grantee's guests, invitees, agents, and unsolicited visitors. Notwithstanding the foregoing, this Section shall not be construed to restrict or limit any claim, action or demand against Grantor by Grantee for Grantor's failure to comply with the terms of this Agreement.

8. **Notices:** All notices or demands required or permitted hereunder shall be in writing and shall be deemed to be delivered whether actually received or not, three (3) days after deposit in a regularly maintained receptacle for the mail, certified mail, return receipt requested, postage prepaid, addressed to the residence of the party to whom the notices or demands are sent.

9. **Attorney Fees:** If any suit, action or arbitration is filed or commenced by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit, action or arbitration as fixed by the trial court or arbitrator(s), and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

10. **Applicable Law:** This Agreement has been entered into in the State of Oregon and the Property is located in State of Oregon. The parties agree that the laws of the State of Oregon shall be used in construing this Agreement and enforcing the rights and remedies of the parties.

11. **Entire Agreement:** This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter. Each party intends that this Agreement in all respects shall be deemed and construed to be equally and mutually prepared by all parties and it is hereby expressly agreed that any uncertainty or ambiguity shall not be construed for or against any party.

12. **No Merger.** This Agreement has been made by the undersigned with the intent to convey title of the real property described herein, or a portion thereof, to a third party. The doctrine of Merger shall not apply to this Agreement. The easements and the rights and obligations set forth therein shall not be adjusted, terminated, extinguished, voided, or otherwise as a result of an owner's common ownership of multiple parcels.


**IN WITNESS WHEREOF**, the parties have set their hands to this Agreement on the date set forth below.

DATED this 26<sup>th</sup> day of June, 2008.

**Grantor**  
Medford Land Company LLC

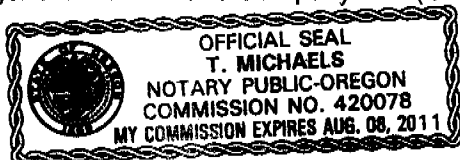
  
Patricia A. Curtin, Manager


**Grantee**  
Medford Land Company LLC

  
Patricia A. Curtin, Manager

STATE OF OREGON                     )  
  ) ss.  
County of Jackson                     )

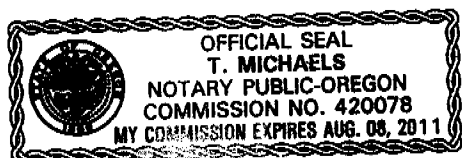
This instrument was acknowledged before me on 6/26, 2008, by Patricia A. Curtin as Manager of Medford Land Company LLC (Grantor).



  
Notary Public – State of Oregon  
My Commission Expires: 8.8.11

STATE OF OREGON                     )  
  ) ss.  
County of Jackson                     )

This instrument was acknowledged before me on 6/26, 2008, by Patricia A. Curtin as Manager of Medford Land Company LLC (Grantee).



  
Notary Public – State of Oregon