

2009-009991

Klamath County, Oregon



00069903200900099910060069

07/23/2009 09:09:51 AM

Fee: \$46.00

AFTER RECORDING, RETURN TO:

William M. Ganong
Attorney at Law
514 Walnut Avenue
Klamath Falls OR 97601

2006-015625

Klamath County, Oregon



00000253200600156250060069

08/02/2006 03:46:37 PM

Fee: \$46.00

SUPPLEMENTAL EASEMENT AGREEMENT

THIS DOCUMENT IS BEING RE-RECORDED TO CORRECT A SCRIVENER'S ERROR

This Supplemental Easement Agreement is made as of the 8th day of June, 2006, by and between Klamath Publishing, LLC., a Washington Limited Liability Company whose address is 211 First Avenue NW, Seattle, Washington 98119, herein called "Grantor," and Bulldog, LLC., an Oregon Limited Liability Company whose address is 1544 NE 48th Avenue, Portland, Oregon 97213, herein called "Grantee."

RECITALS:

A. By Declaration of Easement dated October 8, 2001 and recorded in Volume M01 at Page 51279 of the Microfilm Records of Klamath County, Oregon, Mainlander Service Corporation, an Oregon corporation, created an easement for roadway access purposes across land now owned by Grantor, which is more particularly described on Exhibit "A" attached ~~hereto~~ thereto and incorporated herein by this reference, for the benefit of land now owned by Grantee described as the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, Township 38 South, Range 9 E., W.M., Klamath County, Oregon.

B. During the summer of 2005, Grantor began site development of its land. In the process of excavating a building site on its land, Grantor blocked said easement with a large pile of soil excavated from other areas of its land and made a severe cut into the easement that had the effect of significantly reducing the width of the easement at a point and undermining the lateral stability of the easement. Grantor also constructed drainage structures adjacent to the easement near its South end which changed the lateral slope of portions of the easement for a length of approximately 40 feet so that if the easement is eventually improved and dedicated to public use it may be necessary to add and compact fill on the easement area to accommodate construction of sidewalks and other improvement required for such dedication. Said fill may extend onto Grantor's adjoining land requiring slope easements to accommodate such construction and future maintenance of the improvements.

C. Upon discovering said impacts on the easement, Grantee objected to Grantor's development of the property and demanded that Grantee repair the easement and provides other consideration for damages to the easement.

D. By this Agreement, the parties desire to provide for the future use and development of their property and the easement that serves their respective parcels and to compromise and settle all claims arising from Grantor's interference with said easement.

Therefore, the parties agree as follows:

SUPPLEMENTAL EASEMENT AGREEMENT

AGREEMENT

1. Grantor does hereby affirm and confirm the valid and existing rights of Grantee in and to the use of said easement.

2. The original easement was created in anticipation of the future use and development of the parties' respective parcels for industrial, commercial, residential, and any other allowed or possible uses of their parcels. It is possible that the easement will be developed to the standards then existing in the Land Development Code(s) of the City of Klamath Falls or Klamath County or another entity with jurisdiction. In the event said entity requires the dedication of the easement for public use, then Grantor shall promptly execute such documents as are reasonably required to dedicate the area of the easement for such public use.

3. Attached hereto as Exhibit A and incorporated herein by this reference is a portion of sheet C2.5 of Grantee's site plan which it shall submit with supporting documents to the City of Klamath Falls for the purpose of receiving a site construction permit. Grantor agrees that on or before October 30, 2006, it shall remove the pile of soil resulting from construction excavation from the easement. Grantor shall reconstruct the easement area disturbed by Grantor's excavation and other construction activity. Said reconstruction shall include restoring the easement area disturbed by Grantor to a width of not less than 60 feet and grading the easement to meet the slopes shown on Exhibit A. Grantor shall restore or reconstruct the area adjacent to the easement so that the slopes of said adjacent area are no greater than 3 to 1 (horizontal to vertical). The area of the easement and the supporting adjacent land shall be compacted to a standard of 95%, seeded with natural grasses, and otherwise stabilized so it will not shift, erode, or otherwise interfere with or damage the area of the easement and the integrity of the easement. When the said reconstruction is completed, the structural integrity of the easement area disturbed by Grantor's construction activities shall be sufficient to allow the installation of utilities, including but not limited to sewer, water, natural gas, electrical and cable television lines and conduit, the construction of a street meeting the code of the City of Klamath Falls or Klamath County, including but not limited to gutters, sidewalks, and street lighting, without damage to Grantor's adjoining land.

4. Either party may, at any time, improve the easement, provided, however, that the other party shall have no obligation to participate financially in any such improvements. The party making said improvements shall be solely responsible for the maintenance of said improvements until such time as another party commences improvement of its property. Thereafter, the cost of maintenance shall be shared by each holder of an interest in the easement in proportion to the use made of the easement by each holder of an interest in the easement. Use of the easement shall be based on frequency of use and weight of vehicles using the easement.

5. Notwithstanding the provisions of paragraph 4, above, if Grantee desires to improve the easement to the standards of the City of Klamath Falls and if the applicable standards require the construction of sidewalks and/or other improvements on areas of the easement which require the replacement of material excavated by Grantor during its site construction described in Recital B,

then Grantor shall promptly reimburse Grantee for the actual cost of replacing and compacting such fill. Further, if the slope of the areas where compacted fill is located extends beyond the area of the easement, then Grantor shall grant slope easements for such areas.

6. No party shall unreasonably curtail or impede the use of the easement by the other party. Provided, however, either party may erect and maintain a gate or other barrier on the easement controlling access to the undeveloped portions of Grantor's land and to Grantee's land. Said gate or barrier may be removed at any time by either party. The maintenance of said gate or barrier shall not be deemed a waiver of either party's right to use the easement or estop the parties from the future development, use and enjoyment of the easement. No party's rights hereunder shall lapse as a result of the party's failure to use the easement.

7. 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.

8. The use of the easement by either party shall not be lost due to adverse use of the easement area by another party. Each party does hereby waive any right it may now have or may have in the future to seek termination of the rights of the other party as a result of such party's nonuse or as the result of adverse use or claims of abandonment.

9. 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's fees at trial or on appeal as adjudged by the trial or appellate court.

10. The rights of the parties set forth in this agreement shall run with the land as to all property burdened and benefited by the easement and by this agreement, including any division, subdivision, or partition of such property. The rights, covenants, and obligations contained in the original easement and this agreement shall bind, burden, and benefit each party's successors, assigns, lessees, and mortgagees. In the event of any conflict between the terms of the original easement and this Supplemental Easement Agreement, the terms of this Agreement shall prevail.

11. As additional consideration for this Agreement, Grantor shall pay to Grantee the sum of \$1,000.00 to reimburse Grantee for a portion of its costs and expenses incurred in remedying Grantor's interference with Grantee's easement rights resulting from Grantor's actions described in paragraph B, above. Receipt of said sum is hereby acknowledged by Grantee.

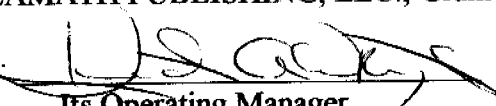
12. In consideration for Grantor's full, prompt, and faithful compliance with the terms of this agreement, Grantee does hereby waive and release all claims it may have arising from Grantor's excavation of the easement area, interference with the use of the easement, and other construction activities heretofore performed by Grantor or on its behalf on the easement area. Grantee agrees to immediately move the Oregon Land Use Board of Appeals to dismiss Case No.s 2005-155 and 2005-186.

13. Any notice required by this agreement or by the easement agreement shall be given by certified mail, return receipt requested, addressed to the other party at the address first set forth herein above or at such address as either party may provide to the other in writing subsequent to the execution of this agreement. Such notice shall be deemed received by the addressee three business days after such notice is deposited in the United States mail, postage prepaid.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date set forth above.

KLAMATH PUBLISHING, LLC., Grantor

By:

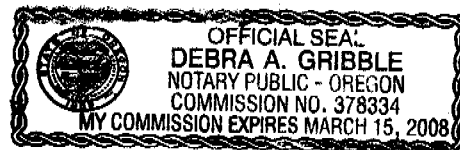

Its Operating Manager

STATE OF Oregon, County of Klamath ss.

This instrument was acknowledged before me on 28th, 2006 by Heidi Wright as the Operating Manager of Klamath Publishing, LLC., a Washington Limited Liability Company.

Debra A. Gribble
Notary Public for

My Commission Expires: March 15, 2008



BULL DOG, LLC., Grantee

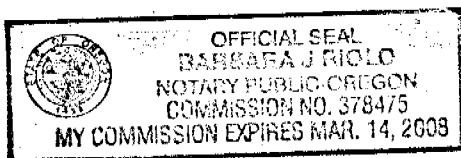
SUPPLEMENTAL EASEMENT AGREEMENT

By: _____

Its Operating Manager

STATE OF OREGON, County of Clackamas ss.

This instrument was acknowledged before me on July 7, 2006 by
Mark Chasse as the Operating Manager of Bulldog, LLC., an Oregon
Limited Liability Company.



Barbara J. Riolo
Notary Public for Oregon

My Commission Expires: 3/14/08

This topographic map, titled "EXHIBIT A", depicts a road project area. The map features several contour lines with elevations ranging from 200 to 230 feet. A proposed road alignment is shown with stationing from 4196 to 4230. Key features include:

- Proposed Road:** A solid line with stationing markers (4196, 4198, 4200, 4210, 4220, 4230) and various grades (e.g., 11.7%, 11.4%, 13.3%, 13.7%, 10.7%, 11.1%, 10.2%, 10.1%, 2.0%, 3.0%, 7.1%, 1.5%, 2.5%).
- Contours:** Dashed lines representing elevation contours at 10-foot intervals (200, 210, 220, 230).
- Spot Elevations:** Numerous points labeled "grd" (ground) with specific elevation values (e.g., 201.0, 201.12, 200.7, 201.3, 201.6, 211.9, 212.4, 216.1, 219.2, 219.7, 224.6, 224.9, 229.6, 229.8, 230.46, 201.08, 200.46, 200.5, 204.6, 205.3, 206.0, 207.1, 197.1, 197.82, 198.3, 198.15, 198.73, 198.51, 198.28, 198.75, 198.11, 198.30, 197.18).
- Infrastructure:** A "44' - 15' HOPE Storm Pipe @ 5.1% Sp." is shown near station 4198. Other labels include "CB E 4197.75", "Pipe E 4198.11", "27.5' x 12' HO", and "15.0' HOPE".
- Other Features:** A circle with a crosshair is located near station 4210. A dashed line labeled "4202" runs vertically on the left side. A hatched area is present near station 4196.