

2009-013553

Klamath County, Oregon



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10/19/2009 10:20:53 AM

Fee: \$57.00

Recording requested by and
when recorded return to:

Anne E. Arathoon
Schwabe, Williamson & Wyatt, P.C.
360 SW Bond, Suite 400
Bend, Oregon 97702

EASEMENT

THIS EASEMENT AGREEMENT ("Agreement"), made and entered into this 9th day of October, 2009, by and between **JH Rocker, LLC**, an Oregon limited liability company (hereinafter called "Grantor"), and **Howard D. Miltenberger and Judy L. Roek**, not as tenants in common but with the rights of survivorship (hereinafter called "Grantee");

WHEREAS, Grantor is the record owner of the real property identified on Exhibit A as the "Servient Estate;" and

WHEREAS, Grantee is the record owner of the real property identified on Exhibit A as the "Dominant Estate;" and

WHEREAS, together the Servient Estate and Dominant Estate are referred to as the "Parcels;" and

WHEREAS, the parties desire to enter into an easement as hereinafter described across the Servient Estate and to share expenses for maintaining the road located on such easement; and

NOW, THEREFORE, in consideration of covenants to be undertaken by Grantee hereunder and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Grant of Easement.** Grantor does hereby grant, assign and set over to Grantee and its successors, assigns and invitees, a perpetual, non-exclusive easement to use a strip of land 25 feet wide directly abutting the east boundary of the Servient Estate running the length of the Servient Estate in a northerly/southerly direction for the purpose of pedestrian and vehicular ingress and egress (the "Easement Strip").

2. **Use.** Grantee and their successors, assigns and invitees, may use the Easement Strip solely for ingress and egress to the Dominant Estate. In connection with such use, the parties may maintain, repair and reconstruct the road on the Easement Strip. Except as to the rights herein granted, Grantor shall have full use and control of the Easement Strip. The parties shall cooperate and cause their invitees to cooperate during

periods of joint use so that each party's use shall cause a minimum of interference to the others.

3. **Shared Expenses.** The parties shall share equally all expenses of repair, maintenance and replacement of the road located on the Easement Strip, so long as such expense is agreed upon in advance in writing by both parties.

4. **Indemnity.** Grantee shall indemnify and defend Grantor from any loss, claim or liability to Grantor arising in any manner out of Grantee's use of the Easement Strip. Grantee assumes all risk arising out of its use of the Easement Strip and Grantor shall have no liability to Grantee or others for any condition existing thereon.

5. **Damage.** In the event a party or a party's invitee(s) damages the Easement Strip, such party shall be obligated to restore the Easement Strip and any damage to the road located thereon to as good or better condition as existed before the damage at such party's sole cost and expense without unreasonable delay.

6. **Non-Use.** The parties agree that non-use of the Easement Strip shall not constitute abandonment and shall in no way impair the rights of such party or their successors, assigns or invitees to use the Easement Strip for the purposes set forth herein.

7. **Priority.** The easement granted hereunder is granted subject to all prior liens, easements, or encumbrances of record.

8. **Successor's Interest.** The easement, rights and obligations described herein shall be appurtenant to and run with the Parcels, and shall bind and inure to the benefit of the immediate parties hereto as well as their respective heirs, executors, administrators, assigns and successors in interest.

9. **Modification.** This Agreement shall be modified only by an instrument in writing executed by all parties.

10. **Attorney Fees.** If any arbitration or litigation is instituted to interpret, enforce, or rescind this Agreement, the prevailing party on a claim will be entitled to recover with respect to the claim in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 (A)(2), incurred in connection with the arbitration, litigation, any appeal or petition for review, in the collection of any award, or enforcement of any order, as determined by the arbitrator or court.

11. **Entire Agreement.** This Agreement is the final and complete agreement between the parties. All prior and contemporaneous negotiations and agreement, whether oral or written, are replaced by this Agreement and are of no further force or effect.

12. **Exhibits.** The exhibits referenced herein are a part of this Agreement as if set forth in full herein.

IN WITNESS WHEREOF, the parties hereto have entered into this Easement as of the day and year first written above.

"Grantor"

JH Rocker, LLC, an Oregon limited liability company

Howard D. Miltenberger
Howard D. Miltenberger, Member

Judy L. Roek
Judy L. Roek, Member

"Grantee"

Howard D. Miltenberger
Howard D. Miltenberger

Judy L. Roek
Judy L. Roek

STATE OF OREGON

County of Klamath

) ss.

The foregoing instrument was acknowledged before me this 14th day of October, 2009 by Howard D. Miltenberger in his capacity as a member of JH Rocker, LLC, an Oregon limited liability company, as Grantor.

Alice L. Bishop
NOTARY PUBLIC FOR OREGON



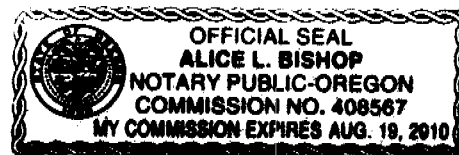
STATE OF OREGON

County of Klamath

) ss.

The foregoing instrument was acknowledged before me this 9th day of October, 2009 by Judy L. Roek in her capacity as a member of JH Rocker, LLC, an Oregon limited liability company, as Grantor.

Alice L. Bishop
NOTARY PUBLIC FOR OREGON



STATE OF OREGON

County of Klamath

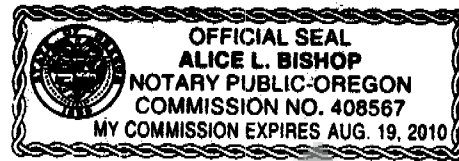
) ss.

The foregoing instrument was acknowledged before me this 14th day of

October, 2009 by Howard D. Miltenberger in his individual capacity, as Grantee.

Alice L. Bishop

NOTARY PUBLIC FOR OREGON



STATE OF OREGON

)
) ss.
)

County of Klamath

The foregoing instrument was acknowledged before me this 9th day of October, 2009 by Judy L. Roek in her individual capacity, as Grantee.

Alice L. Bishop

NOTARY PUBLIC FOR OREGON



Exhibit A

**Property Legal Descriptions
"Servient Estate"**

Commencing at the one quarter corner between Section 36, Township 24 South, Range 8 East of the Willamette Meridian, and Section 1 of Township 25 South, Range 8 East of the Willamette Meridian; running thence North 0°32' East a distance of 881.76 feet; and thence south 89°15' East a distance of 839.0 feet to the true point of beginning; thence East a distance of 169.2 feet; thence North a distance of 125.0 feet; thence West a distance of 169.0 feet; thence South a distance of 125.0 feet to the point of beginning.

"Dominant Estate"

A parcel of land located in the SW1/4 of the SE1/4 of Section 36, Township 24 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon being the Eastern part of that parcel conveyed to Batista and Juanita Milani in Volume M82, page 522, Microfilm Records of Klamath County, Oregon and more particularly described as follows:

Commencing at the South quarter corner of said Section 36; thence along the center quarter line of Section 36, North 00°26'27" East 881.76 feet; thence along the North line of the above said Milani land, South 89°21'15" East 839.0 feet to the point of beginning, a #5 x 48" plastic capped steel rod; thence continuing South 89°21'15" East 181.0 feet to a #5 x 48" plastic capped steel rod; thence along two lines of land conveyed to Cascade Natural Gas Corporation, South 00°26'27" West 259.1 feet to a #5 x 48" plastic capped steel rod and South 89°21'15" East 140.5 feet to a #5 x 48" plastic capped steel rod set along the arc of a 0°58' curve at the Northwest line of U.S. Highway 97; thence 64.54 feet along said curve arc,

the chord of which bears South 23°10' West 64.53 feet to a 35 steel rod at the Northeast corner of Riddle Acres Subdivision; thence along the North line of said Riddle Acres, North 89°21'15" West 295.49 feet to a #4 steel rod at the corner common to Lots 4 and 5, Block 1, Riddle Acres; thence along the East line of Milani reserved lands, North 00°14'19" East 318.8 feet to the point of beginning, as shown on that certain plat of May 1982 made by Raymond E. Oman, PLS, and on that file in the records of the Klamath County Surveyor.

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