

2009-014936

Klamath County, Oregon

GRANT OF EASEMENT AND
MAINTENANCE AGREEMENT

Parties:

Grantor:
JWTR LLC, an Oregon Limited Liability
Company, and its successors and assigns,

-and-

Grantees:
Kimball L. Wallis and Joanne K Wallis, husband
and wife, and their successors and assigns.

After Recording, Return To:
First American Title (Attn: Dori Crain)
401 Main Street #1
Klamath Falls, OR 97601



00075798200900149360080086

11/20/2009 03:04:42 PM

Fee: \$77.00

1. Recitals:

Grantor owns real property in Klamath County, Oregon, identified as follows: Township 33 South, Range 13, Section 1, Tax Lot 700.

Grantees own real property in Klamath County, Oregon identified as follows: Township 33 South, Range 13, Section 1, Tax lot 500.

Grantees' parcel adjoins Grantor's property to the North.

By this Agreement, Grantor desires to grant to Grantees an easement over and upon Grantor's property as specified herein, and the parties desire to set forth their rights and duties with respect thereto.

Grantor, for and in consideration of one thousand five hundred (\$1,500.00) dollars and strict compliance with the terms and conditions hereof, the parties now enter into the following:

2. Agreement:

- A) The foregoing recitals are incorporated into and made a part of this Agreement.
- B) Grantor grants, transfers and conveys to Grantees, their successors, and assigns a conditional easement over and across Grantor's property, described as an easement upon, over and along a right-of-way twenty (20) feet in working surface width along the west property line of tax lot 700 in Township 33S, Range 13 East, Section 1, Klamath County, Oregon, beginning at the intersection of said property line with US Forest Service Road 3207, thence north along said property line to the NW corner of said parcel approximately as shown in red dashed line on the attached Exhibit A.

C) The foregoing grant is made on the following terms and conditions:

1. The Grantees may use the easement, including a road upon, over and along a right-of-way twenty (20) feet in working surface width running northwesterly located in the W $\frac{1}{2}$ SW $\frac{1}{4}$, Section 1, T33S, Range 13 East, tax lot 700, Klamath County, Oregon, approximately as shown in yellow solid line on the attached Exhibit A, as a means of ingress and egress to and from Grantees' property.
2. While this easement is in effect Grantees, their successors, and assigns shall:
 - a) Not cut or otherwise damage or destroy any forest growth on JWTR property without the prior written consent of JWTR.
 - b) Keep JWTR property free of litter.
 - c) Comply with all State Fire Protection Requirements. Grantees hereby agree that JWTR, its employees, or designees may enter Grantees' property at any time for the purpose of firefighting and remain thereon for such time as reasonable and necessary to combat any active forest or range fire on the property. Further, JWTR may establish fire lines, back burns, and move earth as necessary, and in conformance with established firefighting procedures to combat an active forest or range fire.
 - d) Grantees shall not fence, gate, block, or otherwise obstruct access to the easement or roads named herein.
 - e) Immediately suspend use of the easement upon notice by JWTR.
 - f) Except in an emergency, not use roads on JWTR property during periods of heavy precipitation so as not to damage the road.
 - g) Not haul any timber or commercial products on JWTR property without notice and permission of JWTR.
 - h) Not snowplow on JWTR property without express approval by JWTR.
 - i) Not drain fuels, oils, and other lubricants on JWTR property. Any contamination will be removed as directed by the JWTR representative.
 - j) Not apply herbicides or other agricultural chemicals on JWTR without express approval by JWTR.
 - k) Notify, report, collect, remove and treat a spill or other incident involving hazardous waste or substance in accordance with Oregon D.E.Q. rules and regulations. Grantees shall provide JWTR copies of any all D.E.Q. notices when filed.
 - l) Not do or permit to be done any act on JWTR property which may become or result in any lien or charge against said land.

- m) Not do any slashing, cut any timber, or set any fire on JWTR property, and shall not commit, suffer or permit any waste or strip on said land nor any trespass thereon.
- n) Not place exclusionary signs prohibiting public recreational use of the above-described land and adjacent lands belonging to JWTR.
- o) When either party is the sole user of the easement or roads described herein, or any portion thereof, such party shall maintain that portion of said easement or road so used at its sole expense. However, during periods of time when other parties are using the same portions of said easement or road, maintenance shall be in proportion to each party's use.
- p) For the purpose of this agreement, maintenance is defined as the work normally necessary to preserve and keep the easement or roads as nearly as possible in their present condition or as hereafter improved.
- q) Unless the parties hereto agree in writing to share the cost of improvements in advance of such improvements being made, such improvements shall be solely for the account of the improver.

3. **ASSUMPTION OF RISK AND LIABILITY OF GRANTEES:**

- A. JWTR has made no representation as to the present or future conditions of its property or the character of the traffic on any of its roads, and Grantees assume all risks of damage to property of or injury to Grantees or their invitees in connection with the exercise of rights hereunder.
- B. Grantees shall pay for all damages to JWTR's property resulting directly or indirectly from the negligent acts or omissions of Grantees or their invitees hereunder, and shall reimburse JWTR for all costs reasonably incurred for fighting fire resulting directly or indirectly from the Grantees' or their invitees acts or omissions hereunder whether negligent or otherwise.
- C. Grantees, and their successors and assigns hereby agree to defend, indemnify, and save harmless JWTR and its employees against any and all loss, damage, liability, claims, demands or costs resulting from injury or harm to persons or property (including, without limitation, Grantees' invitees or property) arising out of or in any way connected with Grantees' presence or activities on JWTR's property excepting only such injury or harm as may have been caused directly and solely by the active fault or negligence of Grantees' or their invitees. The Grantees' activities shall be deemed to include those of subcontractors.
- D. Without limiting the generality of the foregoing, Grantee's indemnity includes claims caused by the use, misuse, or failure of any vehicle, rigging, blocking, scaffolding or other things used by Grantee, even though such vehicle, rigging, scaffolding, or other things be rented, loaned or furnished to Grantee by JWTR. The defense and indemnity obligation specifically applies to operations in proximity to power lines and other utilities.

4. COMPLIANCE WITH LAWS AND REGULATIONS:

- A. While on JWTR properties, Grantees and their invitees shall comply with all laws and regulations, Federal, State, or local, including, but not limited to, those relating to forestry and conservation practices and the prevention, suppression and control of fire, and all valid orders of Federal, State, and local officials pertaining thereto.
- B. Grantees and their invitees shall not operate any vehicle capable of carrying passengers on JWTR property unless said vehicle carries automobile liability insurance covering owned, hired, and non-owned vehicles in at least the minimum coverage amounts required by state law.
- C. Except for routine and simple ingress and access, before commencing any other activities on JWTR property described in this Agreement, Grantees shall, at their own cost and expense, secure a policy or policies of insurance, and during the term of this Agreement, maintain such insurance in a form and with companies acceptable to JWTR, insuring against liability growing out of the Grantee's operations, or the operations of its employees, agents, contractors, or other persons acting for or on the behalf of the Grantee, including the following:
 - 1. Comprehensive General Liability Insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for bodily injury and property damage, including coverage for operations and completed operations; independent contractors; blanket contractual liability (including liability assumed under the indemnification paragraph of this Agreement); explosion, collapse; and underground damage if blasting or excavation is to be done; and automobile liability insurance covering owned, hired and non-owned vehicles (including the "limited pollution for autos endorsement").
The policies shall by endorsement name JWTR as an additional insured with respect to the performance of this Agreement. The Aggregate limit shall be specific to this Agreement. The coverages shall be primary, exclusive of any coverage carried by JWTR, and shall be exhausted first notwithstanding that JWTR may have other valid and collectible insurance covering the same risk. Nothing herein contained shall limit the Grantee's liability to JWTR to the scope or the amount of the insurance coverage.
 - 2. State or private industrial accident insurance covering Grantee and all its employees, if any, which shall fully comply with State and Federal Employment and Worker's Compensation laws.
 - 3. As necessary, Grantees shall deliver to JWTR certificates from Grantees' insurance company evidencing the coverage described herein, and shall provide such further evidence to JWTR which shall establish that the industrial insurance required herein has been secured. All certificates of insurance shall provide on their face that the policies represented thereby not be terminated, reduced or changed without providing thirty (30) days prior written notice to JWTR.

5. Threatened and Endangered Species of Wildlife:

A. Grantee shall, while on JWTR property:

1. Promptly report to JWTR all sightings of threatened and endangered wildlife species on or near JWTR's lands or operations.
2. Suspend or modify operations where necessary to avoid killing or injuring threatened and endangered wildlife, take any other steps needed to comply with laws, regulations and agency orders, and promptly notify JWTR of the steps taken.
3. Promptly report any dead or injured threatened and endangered wildlife on or near JWTR's lands or operations to JWTR's representative, or to the U. S. Fish and Wildlife Service and the state wildlife agency if JWTR's representatives are not available to make such a report. Do not handle or disturb any dead or injured threatened and endangered wildlife or disturb the scene where they are found until the agencies complete their investigation.
4. Cooperate with any government agency investigations into the causes of death or injury of threatened and endangered wildlife on or near JWTR's lands or operations.
5. Inform all persons working on or near JWTR's lands at the direction of Grantees of these requirements, and include these provisions in any subcontracts for such work.

6. DURATION, TERMINATION AND SUSPENSION:

- A. Until terminated, the easement granted by this Agreement runs with the land hereinbefore described and shall bind and benefit the parties, and their respective heirs, successors and assigns.
- B. This easement shall extinguish, and all rights hereunder shall terminate automatically after ten (10) days' written notice of default given by either party to the other, if the default has not been remedied within such time. The termination of this Agreement shall not prejudice JWTR's right to collect damages accrued theretofore or thereafter accruing on account of Grantees' breach of any term hereof.
- C. Any failure to exercise a right to terminate this Agreement in case of default shall not constitute a waiver of the defaulting party's obligation to perform strictly in accordance with the terms of this Agreement. Any such right to terminate shall remain in full force and effect and may be exercised so long as such default continues.

7. NOTICE:

- A. Any notice to be given by either party hereto to the other under the provisions of or with respect to this Agreement may be served personally or by registered mail, addressed to the party to be served at the latter's post office address hereinabove

set forth; and such service by registered mail shall be equivalent to personal service.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.

This Agreement is executed by the parties on the dates set forth below, and in the case of the Corporate signatory, with the authority of its board of directors.

GRANTOR:

JWTR LLC

By

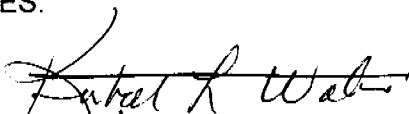
Title:

CFO

Date:

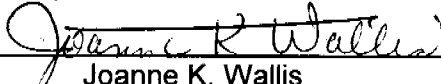
11/12/2009

GRANTEES:

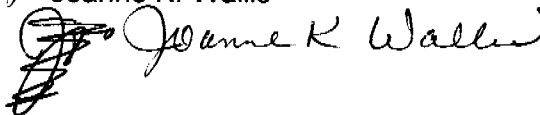


Kimball L. Wallis





Joanne K. Wallis



Date:

11-5-2009

11-16-2009

Date:

11-5-09

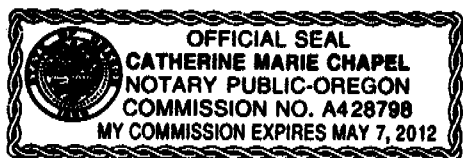
11-16-09

STATE OF OREGON)
)
COUNTY OF KLAMATH)

ss.

On this 12th day of November, 2009, before me personally appeared Thomas Ludlow, to be known to be the CFO, respectively, of JWTR, LLC, the company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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



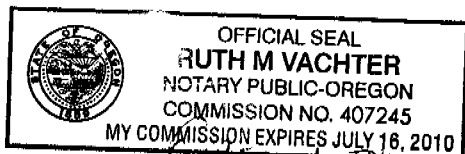
Catherine Marie Chapel
Notary Public in and for the State of Oregon
My Commission Expires: May 7, 2012

STATE OF OREGON)
)
COUNTY OF MARION)

ss.

On this 16th day of NOVEMBER, 2009, before me personally appeared KIMBALL L. WALLIS, who executed the above and foregoing instrument and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

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



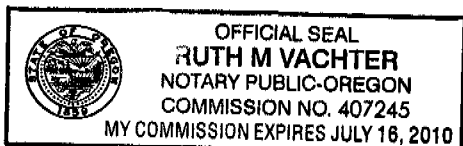
Ruth M. Vachter
Notary Public in and for the State of Oregon
My commission expires: 7/16/2010

STATE OF OREGON)
)
COUNTY OF MARION)

ss.

On this 16th day of November, ~~2009~~ 2009, before me personally appeared JOANNE K. WALLIS, who executed the above and foregoing instrument and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

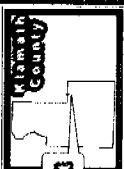
IN WITNESS WHEREOF, I hereunto set my hand and affixed my official seal the day and year first above written.



Ruth M. Vachter
Notary Public in and for the State of Oregon
My commission expires: 7/16/2010

Prepared By:

First American
Title Insurance Company
of Oregon
October 31st, 2008



Subject



0 800
feet

R-3313-000000
00560
Taxlots

Map data courtesy of
Klamath County GIS Dept
First American Accounts re:
resurvey for accuracy

