

2010-004745

Klamath County, Oregon



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**RECORDING REQUESTED BY
AND AFTER RECORDED RETURN TO:**

Fitzgerald Abbott & Beardsley LLP
Attention: Gerald C. Smith
1221 Broadway, 21st Floor
Oakland, California 94612

15 1495554

DECLARATION OF PRIVATE EASEMENT

This DECLARATION OF PRIVATE EASEMENT ("Declaration") is made this 15th day of April, 2010, by PETERSON MACHINERY CO., an Oregon corporation ("Declarant").

RECITALS:

A. Declarant is the owner of two parcels of real property located in Klamath County, Oregon, more particularly described on Exhibit "A" attached hereto (the "Dominant Parcel") and Exhibit "B" attached hereto (the "Servient Parcel"). The Dominant Parcel and the Servient Parcel are adjacent to each other

B. Declarant desires to declare, establish and grant an easement across the Servient Parcel for the benefit of the Dominant Parcel as hereinafter described.

NOW, THEREFORE, Declarant declares, on behalf of itself and its grantees, successors and assigns, that the Dominant Parcel and the Servient Parcel are subject to the easements, covenants, conditions and restrictions set forth in this Declaration.

DECLARATION:

Section 1. Declaration of Easement.

Declarant hereby declares, establishes, creates and grants a perpetual, exclusive private easement over, across and under that portion of the Servient Parcel described on Exhibit "C" attached hereto (the "Easement Area"), for the purpose of installing, constructing, operating, maintaining, repairing, and replacing an underground sewer line, and piping and connections related thereto ("Sewer Line"), as necessary to provide sanitary sewer services to the Dominant Parcel and improvements thereon. It is the intention of the Declarant that the easement granted hereunder is to be perpetual in nature and be appurtenant to the Dominant Parcel. The easement granted hereunder shall not be deemed to have been abandoned or to have lapsed in the event the owner of the Dominant Parcel fails to use the easement on a continuous basis.

Section 2. Construction and Repair.

The cost and expenses for construction of the Sewer Line and for any necessary maintenance and repairs to the Sewer Line shall be borne by owner of the Dominant Parcel. If the Sewer Line shall be dedicated to the local governmental authority with jurisdiction over the Sewer Line and such dedication is accepted, the obligations of the owner of the Dominant Parcel under this paragraph shall terminate effective upon acceptance of such dedication.

Section 3. Obstructions.

The owner of the Servient Parcel shall at all times keep the Easement Area free and clear of any building and all other structures, trees, barriers and other objects that would interfere with the use and enjoyment of the easement granted hereunder.

Section 4. Remedies.

In the event the owner of the Dominant Parcel or the Servient Parcel shall fail to perform its obligations under this Declaration, 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.

Section 5. Attorney Fees.

In the event suit or action is commenced to enforce, rescind or interpret this Declaration, the prevailing party shall be entitled to recover from the other party, and the other party agrees to pay to the prevailing party, in addition to costs and disbursements allowed by law, the prevailing party's reasonable attorney fees actually received at trial or on appeal thereof or therefrom, and in any bankruptcy proceedings, in addition to all other sums provided by law.

Section 6. Effect of Declaration.

The easement and covenants contained herein shall run with the land as to the Dominant Parcel and the Servient Parcel, including any division or partition of such parcels. The rights, covenants and obligations contained in this Declaration shall bind, burden and benefit the respective heirs, personal representatives, successors and assigns, grantees, purchasers, lessees and mortgagees of the Dominant Parcel and Servient Parcel. It is the express intent of Declarant that this Declaration and the easements granted herein will not merge and will not be divested notwithstanding any common ownership of title of the Dominant Parcel and the Servient Parcel.

Section 7. Severability.

The illegality, invalidity or unenforceability under law of any covenant, restriction or condition or any other provision of this Declaration shall not impair or affect in any manner the validity, enforceability or effect of the remaining provisions of this Declaration. Without intending to affect or limit the promisor's intent set forth in Sections 6 or 9 hereof, the event the easements and covenants contained herein are deemed to have been extinguished because Declarant is the owner of both the Dominant Parcel and the Servient Parcel at the time this Declaration is executed, then the easements and covenants shall become immediately and automatically effective upon the first conveyance by Declarant of either parcel.

Section 8. Applicable Law.

This Declaration shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Oregon, including without limitation, matters affecting title to all real property described herein.

Section 9. Amendment in Writing; Termination; Third Party Beneficiary.

The provisions of this Declaration may not be modified, amended or terminated except by the recording in the Klamath County, Oregon deed records of an instrument modifying, amending or

Exhibit A

Dominant Parcel

Real property in the City of Klamath Falls, County of Klamath, State of Oregon, described as follows:

A PARCEL OF LAND IN SECTION 33, TOWNSHIP 38 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SOUTH SIXTH STREET WHICH BEARS S 55°08'50" E 594.48 FEET FROM THE WEST ¼ OF SECTION 33; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE S 27°06'50" E 122.14 FEET; THENCE S 03°41'00" E 252.00 FEET; THENCE S 34°49'00" W 15.00 FEET; THENCE S 55°11'00" E 150.00 FEET; THENCE LEAVING SAID WESTERLY RIGHT OF WAY LINE S 34°49'00" W 623.06 FEET TO A POINT; THENCE 223.35 FEET ALONG THE ARC OF A 467.00 FOOT RADIUS CURVE TO THE RIGHT, THE LONG CHORD OF WHICH BEARS N 25°31'17" W 221.24 FEET AND HAVING A DELTA ANGLE OF 27°22'04"; THENCE 555.49 FEET ALONG THE ARC OF 686.05 FOOT RADIUS CURVE TO THE RIGHT, THE LONG CHORD OF WHICH BEARS N 11°21'30" E 540.44 FEET AND HAVING A DELTA ANGLE OF 46°23'30"; THENCE N 34°33'14" E 211.60 FEET; THENCE 76.23 FEET ALONG THE ARC OF A 487.68 FOOT RADIUS CURVE TO THE LEFT, THE LONG CHORD OF WHICH BEARS N 30°04'34" E 76.15 FEET AND HAVING A DELTA ANGLE OF 08°57'21" TO THE POINT OF BEGINNING.

APN: R611644 AND P889804

Exhibit B

Servient Parcel

A parcel of land situated in the SW1/4 of Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath Falls, Oregon, being a portion of a railroad spur formerly owned by Union Pacific Railroad as shown on Central Pacific Railway map v-1/s5-d, being more particularly described as follows:

Commencing at the W1/4 corner of said Section 33, thence North 00°00'49" East, 69.37 feet; thence South 55°27'00" East, 407.10 feet; thence South 10°46'30" West, 10.93 feet; thence South 49°37'44" East, 197.05 feet; thence along the arc of a 467.68 foot radius curve to the right, through a central angle of 03°03'47" (the long chord of which bears South 22°58'12" West, 25.00 feet) an arc distance of 25.00 feet to the TRUE POINT OF BEGINNING; thence South 40°26'39" East, 21.98 feet to a point of curvature; thence, along that property described in D.V. M03, Page 45180 the following four (4) courses: along the arc of a 487.68 foot radius curve to the right, through a central angle of 08°57'21" (the long chord of which bears South 30°04'20" West, 76.15 feet) an arc distance of 76.23 feet; thence South 34°33'00" West, 211.60 feet to a point of curvature; thence along the arc of a 686.05 foot radius curve to the left, through a central angle of 46°23'30" (the long chord of which bears South 11°21'16" West, 540.44 feet) an arc distance of 555.49 feet to a point of compound curvature; thence along the arc of a 467.60 foot radius curve to the left, through a central angle of 27°33'00" (the long chord of which bears South 25°36'59" East, 222.68 feet) an arc distance of 224.84 feet to a point to the cusp of a curve to right; thence, along said curve, along the arc of a 911.87 foot radius curve to the right, through a central angle of 07°50'00" (the long chord of which bears North 39°28'47" West, 124.60 feet) an arc distance of 124.69 feet to a point of compound curvature; thence, along that property described in D.V. 2007-005864 the following five (5) courses; along the arc of a 484.18 foot radius curve to the right, through a central angle of 12°38'00" (the long chord of which bears North 18°09'31" West, 106.54 feet) an arc distance of 106.76 feet to a point of compound curvature; thence along the arc of a 702.55 foot radius curve to the right, through a central angle of 22°37'00" (the long chord of which bears North 00°32'00" West, 275.52 feet) an arc distance of 277.32 feet; thence North 10°46'30" East, 70.23 feet to a point of compound curvature; thence along the arc of a 706.05 foot radius curve to the right, through a central angle of 01°26'56" (the long chord of which bears North 17°13'13" East, 17.85 feet) an arc distance of 17.85 feet to a point on said curve; thence continuing along the arc of said 706.05 foot radius curve to the right, through a central angle of 16°37'00" (the long chord of which bears North 26°14'29" East, 204.05 feet) an arc distance of 204.77 feet; thence, along that property described in D.V. M99, Page 25631 the following two (2) courses; North 34°33'00" East, 211.60 feet to a point of curvature; thence along the arc of a 467.68 foot radius curve to the left, through a central angle of 10°03'01" (the long chord of which bears North 29°31'29" East, 81.93 feet) an arc distance of 82.04 feet to the point of beginning.

And also, a parcel of land situated in the SW1/4 of Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath Falls, Oregon, formerly owned by Union Pacific Railroad as shown on Central Pacific Railway map v-1/s5-d, described as Parcel 1 in easement deed from the Central Pacific Railway Company and the Southern Pacific Company, Grantor's, to the State of Oregon, Grantee, by deed recorded April 16, 1956 in Volume 282 of Deeds on Page 224, of the Records of Klamath County, Oregon.

Exhibit C

Easement Area

A portion of land situated in the SW1/4 of Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being a portion of a railroad spur as shown on Central Pacific Railway map V-1/S5-d, being more particularly described as follows:

Commencing at the W1/4 corner of said Section 33; thence North 00°00'49" East, 69.37 feet; thence South 55°27'00" East, 407.10 feet; thence South 10°46'30" West, 10.93 feet; thence South 49°37'44" East, 197.05 feet; thence along the arc of a non-tangent 467.68 foot radius curve to the right, through a central angle of 03°03'47" (the long chord of which bears South 22°58'05" West, 25.00 feet) an arc distance of 25.00 feet to the northwest corner of the property described in D.V. 2009-011407 and the TRUE POINT OF BEGINNING; thence South 40°26'39" East, 21.98 feet to the northeast corner of the property described in D.V. 2009-011407; thence along the easterly boundary line of the property described in D.V. 2009-011407, along the arc of a 487.68 foot radius curve to the right, through a central angle of 08°57'21" (the long chord of which bears South 30°04'20" West, 76.15 feet) an arc distance of 76.23 feet; thence along said easterly boundary line, South 34°33'00" West, 23.90 feet; thence leaving said easterly boundary line, North 55°27'00" West, 20.00 feet to a point on the westerly boundary line of the property described in D.V. 2009-011407; thence along said westerly boundary line, North 34°33'00" East, 23.90 feet to a point of curvature; thence along said westerly boundary line, along the arc of a 467.68 foot radius curve to the left, through a central angle of 10°03'01" (the long chord of which bears North 29°31'29" East, 81.93 feet) an arc distance of 82.04 feet to the true point of beginning, containing 0.05 acres, more or less, with bearings based on Klamath County Survey 7682.