

2014-010043

Klamath County, Oregon



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09/29/2014 12:26:58 PM

Fee: \$92.00

After recording, return to:

Green Diamond Resource Company
1301 Fifth Avenue, Suite 2700
Seattle, WA 98101
Attention: General Counsel



Space above reserved for recorder

WELL EASEMENT AGREEMENT

This Well Easement Agreement (this "**Agreement**"), dated as of September 27, 2014 (the "**Effective Date**"), is by and between JWTR OREGON, LLC, an Oregon limited liability company ("**Grantor**"), and GREEN DIAMOND RESOURCE COMPANY, a Washington corporation ("**Grantee**," and together with Grantor, the "**Parties**").

Recitals

A. The Parties are parties to that certain Asset Purchase Agreement dated as of July 24, 2014 (as amended, the "**Purchase Agreement**"). This Agreement is being executed and delivered by the Parties in connection with the Purchase Agreement.

B. Grantor owns certain real property located in Sections 28 and 29, Township 34 South, Range 14 East, W.M., Klamath County, Oregon, as more particularly described in attached Exhibit A (the "**Burdened Property**"), and a well located on the Burdened Property in S½NW¼NW¼ of Section 28, Township 34 South, Range 14 East, W.M. (the "**Well**").

C. Grantee owns or intends to acquire certain real property within the area identified in attached Exhibit B (collectively, the "**Surrounding Area**").

D. Grantee desires to obtain an easement to access the Well and draw and use water from the Well for forest management and firefighting purposes. Grantor is willing to grant such easement to Grantee on the terms and conditions of this Agreement.

Agreement

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant of Easement.

(a) Grantor grants and conveys to Grantee a non-exclusive easement in gross over, upon, and across existing roads located on the Burdened Property (the "**Roads**") for the purpose of accessing the Well (the "**Access Easement**"). Grantor also grants and conveys to Grantee a non-exclusive easement in gross to draw and use water from the Well for forest management and firefighting purposes (the "**Well Use Easement**," together with the Access Easement, the "**Easements**"). The Easements shall be perpetual, except as otherwise provided herein.

(b) The Easements are subject to all matters of public record and other valid existing rights.

(c) Grantee shall have the non-exclusive right to access and draw water from the Well at any time without notice to, or the prior consent of, Grantor for the purposes described in this Agreement.

(d) Grantee is prohibited from selling to any third party the water obtained from the Well under the Easements. Grantee shall ensure that water obtained from the Well under the Easement is used for no purpose other than forest management and fire fighting and that such water is, in no event, used for domestic purposes or irrigation.

2. Covenants of Grantor. For so long as Grantor is keeping the Well and all related equipment, including but not limited to the fuel source, generator, pump, and piping, in good working condition, Grantor shall have the sole right to maintain the Well and related equipment and control the use thereof. Grantor shall furnish Grantee a key to access the Well so that Grantee and its Permittees may access the Well at any time, without notice. Except as set forth in the proviso below in the case of emergencies for firefighting purposes, if Grantor (or any successor owner) ceases to maintain the Well and all related equipment in the condition described above, Grantee may furnish Grantor written notice of the repair or installation of equipment Grantee believes is necessary to return the Well to good working condition. If Grantor has not performed any needed repair or installation within 30 days after receiving such notice (or, if such repair or installation cannot reasonably be completed within such 30-day period, then if Grantor has not commenced such repair or installation within such 30-day period and thereafter pursued completion of such repair or installation with reasonable diligence), Grantee may, at Grantee's expense, repair the Well and related equipment or install equipment necessary to return the Well to good working condition; *provided*, that in the case of emergencies for firefighting purposes, Grantee shall be entitled, without any requirement of prior notice to Grantor, to act immediately to repair the Well and related equipment or install equipment necessary to return the Well to good working condition. In the event of any such emergency or non-emergency repair or installation by Grantee, Grantee shall have the right to exercise exclusive control over the Well and related equipment, subject to matters of public record and other valid and existing rights, and shall retain title to any new Well equipment or components that were installed by Grantee, until such time as Grantor (or any successor owner) reimburses Grantee for Grantee's actual, reasonable, out-of-pocket costs for such repair or installation and resumes maintenance of the Well and related equipment. At such time as Grantee has been

reimbursed for Grantee's actual, reasonable, out-of-pocket costs for such repair or installation, title to any new Well equipment or components installed by Grantee pursuant to this Section 2 shall become the property of Grantor.

3. Payment by Grantee.

(a) Forest Management Purposes. For the five-year period beginning on the Effective Date and ending at 5:00 pm Pacific Time on the fifth anniversary of the Effective Date (the "**Initial Period**"), to defray Grantor's expenses, Grantee will pay \$100 to Grantor for every 5,000 gallons of water drawn from the Well for forest management purposes (which, for purposes of this Agreement, includes water drawn in preparation for firefighting at a time when no active fire is in progress) (the "**Initial Payment Rate**" and, as hereafter adjusted, the "**Payment Rate**"). Commencing in the year immediately following the expiration of the Initial Period, the Initial Payment Rate shall be increased by 2.5 percent, and thereafter the Payment Rate will increase annually by 2.5 percent over the preceding year's Payment Rate.

(b) Firefighting Purposes. Grantee has no obligation to pay Grantor or any successor owner of the Burdened Property for water drawn from the Well for immediate, active firefighting purposes.

(c) Damage to Well. If Grantee or a Permittee of Grantee causes any damage to the Well or related equipment, other than normal wear through prudent use, Grantee shall reimburse Grantor, within thirty (30) days after written demand by Grantor, the reasonable, out-of-pocket cost incurred by Grantor in remedying such damage, or, at Grantor's option, within thirty (30) days after written demand by Grantor, cause such damage to be repaired at Grantee's sole expense.

(d) Process for Making Payments; Monthly Reports. Any payment due from Grantee to Grantor pursuant to Section 3(a) shall be made not more than thirty (30) days following the last day of the calendar month in which the water was actually drawn from the Well. Payments under this Section 3 will be made and delivered to Grantor in accordance with any of the methods specified in Section 5(i) of this Agreement, and Grantee shall not be liable to Grantor for any lost or undelivered payments so long as Grantee has delivered such payment in a manner specified in Section 5(i).

4. Obligation, Right, and Option to Purchase Burdened Property.

(a) Obligation to Purchase. If at any time during the Initial Period, Grantor obtains from the Oregon Department of Environmental Quality ("**DEQ**") a determination that no further remedial action is required with respect to any existing soil or ground water contamination on the Burdened Property, and Grantor provides Grantee with a copy of the DEQ determination, Grantor may, by notice delivered during the Initial Period, require Grantee to purchase the Burdened Property from Grantor for a price of \$281 per acre.

Any purchase and sale of the Burdened Property by Grantee under this Section 4(a) shall be on the same terms and conditions of purchase set forth in the Purchase Agreement including,

but not limited to, all representations, warranties and covenants of Grantor set forth therein, except that the representations and warranties set forth in Section 3.9 of the Purchase Agreement shall be only with respect to any new violations, contamination, or listings occurring after the date of the DEQ determination. The closing of such purchase and sale shall take place on a date mutually agreed by the Parties but in no event greater than sixty (60) days following the date of Grantor's notice under Section 4(a). At the Closing, Grantor shall deliver to Grantee a deed conveying fee title to the Burdened Property free and clear of all encumbrances other than "Permitted Encumbrances" as defined in the Purchase Agreement; the Lease granted March 01, 2014 by JWTR, LLC, as lessor, to State of Oregon, as lessee, for use and benefit of Oregon State Board of Forestry Department of Forestry ("**Guard Station Lease**") with respect to the Camp 6 Guard Station, if it is in effect; any encumbrances created pursuant to the Purchase Agreement; and any covenants, conditions, or restrictions related to the DEQ determination. If the Guard Station Lease is in effect as of the closing, Grantor shall assign and Grantee shall assume the obligations of owner under such lease by an Assignment and Assumption Agreement in the form set forth in Exhibit C of the Purchase Agreement. Grantor shall further provide Grantee with title insurance in the form required by Section 2.8 of the Purchase Agreement insuring Grantee's interest in such parcels effective as of the closing, subject to the Permitted Encumbrances, as defined in the Purchase Agreement, the Guard Station Lease if applicable, any encumbrances created pursuant to the Purchase Agreement, and any covenants, conditions, or restrictions related to the DEQ determination.

(b) Right of First Refusal. If Grantor receives a bona fide third party offer to purchase fee title to the Burdened Property and Grantor determines in its sole discretion that it is willing to accept such offer, or if Grantor otherwise decides to offer the Burdened Property for sale, before Grantor may sell or transfer the Burdened Property to any third party, Grantor shall first offer the Burdened Property to Grantee by giving Grantee written notice the material terms and conditions on which Grantor is willing to sell the Burdened Property ("**Offer**"). Upon receipt of such notice, Grantee shall have the right of first refusal to purchase the Burdened Property on the same terms set forth in Grantor's notice (the "**Right of First Refusal**"). Grantee shall have ten (10) business days after the date Grantor delivers notice of the Offer to notify Grantor in writing of whether it elects to purchase the Burdened Property. If Grantee does not deliver notice within such time electing to purchase the Burdened Property, Grantor may sell or transfer the Burdened Property to any third party at a price and on terms not materially more buyer-favorable than the terms stated in the Offer. The Right of First Refusal shall not be triggered by and shall not apply to any of the following transactions ("**Excluded Transactions**"): (i) the granting or transfer of any interest in the Burdened Property other than fee title to the Burdened Property, or (ii) the transfer of the Burdened Property or any interest therein to an Affiliate of Grantor, as such term is defined in the Purchase Agreement. The Right of First Refusal runs with and burdens the Burdened Property. Except as otherwise provided herein, any failure of Grantee to exercise the Right of First Refusal in one instance shall not be a waiver by Grantee of the right to exercise the Right of First Refusal in any subsequent instance that triggers the Right of First Refusal. The Right of First Refusal shall terminate automatically if (w) Grantee delivers notice that it elects to exercise the Right of First Refusal or the Option and thereafter fails to close the purchase of the Burdened Property when required through no fault of Grantor, (x) Grantor sells or otherwise transfers fee title to the Burdened Property other

than in an Excluded Transaction, after giving Grantee an opportunity to exercise the Right of First Refusal if applicable, or (y) the Easements granted under this Agreement terminate in accordance with Section 5(h).

(c) Option to Purchase. Grantor grants to Grantee an option to purchase the Burdened Property (the "**Option**"). If Grantee exercises the Option by written notice delivered to Grantor during the Initial Period, the purchase price for the Burdened Property shall be \$281 per acre. If Grantee exercises the Option by delivery of written notice to Grantor at any time after the expiration of the Initial Period, the purchase price for the Burdened Property shall be the fair market value of the Burdened Property as determined by an independent appraiser mutually agreed to by the Parties. Any purchase pursuant to the Option shall be on the terms set forth in this Section 4(c). The Option runs with and burdens the Burdened Property. Except as otherwise provided herein, any failure of Grantee to exercise the Right of First Refusal in any instance shall not be a waiver of Grantee's right to subsequently exercise the Option. The Option shall automatically terminate if (i) Grantee exercises the Right of First Refusal or the Option and thereafter fails to close the purchase of the Burdened Property when required through no fault of Grantor, (ii) Grantor sells or otherwise transfers fee title to the Burdened Property to a third person other than in an Excluded Transaction, after giving Grantee an opportunity to exercise the Right of First Refusal if applicable, or (iii) the Easements granted under the Agreement terminate in accordance with Section 5(h).

Any purchase and sale of the Burdened Property by Grantee under this Section 4(c) shall be on an AS IS, WHERE IS basis, with all defects, known and unknown, latent and patent, disclosed and undisclosed, including, but not limited to, any environmental conditions however caused. The closing of such purchase and sale shall take place on a date mutually agreed by the Parties but in no event greater than sixty (60) days following the date of Grantee's exercise of the Option. At the Closing, Grantor shall deliver to Grantee a bargain and sale deed conveying fee title to the Burdened Property, with no representations or warranties about liens and encumbrances except that Grantor shall convey the Burdened Property free of any judgment liens against Grantor and any financing liens created by Grantor. Grantor shall disclose any unrecorded third party rights actually known to Grantor. If the Guard Station Lease is in effect as of the closing, Grantor shall assign and Grantee shall assume the obligations of owner under such lease by an Assignment and Assumption Agreement in the form set forth in Exhibit C of the Purchase Agreement. Property taxes for the tax year in which the closing occurs shall be prorated as of the closing date. Grantor shall cooperate with Grantee to provide Grantee with title insurance, if requested by Grantee, at no cost to Grantor.

5. General Terms. The Easements are subject to the following terms and conditions:

(a) Road Maintenance Costs. The cost of maintaining the Roads will be allocated on the basis of respective uses of the Roads. When any party uses the Roads, that party shall perform or cause to be performed or contribute or cause to be contributed, that share of maintenance occasioned by such use as hereinafter provided. During periods when the Roads are being used solely by one party, such party shall maintain the portion of the Roads so used to the standards existing at the time use is commenced. During periods when more than one party is using the Roads, or any portion thereof, the parties shall meet and establish necessary

maintenance provisions. For purposes of this Agreement, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure, and road facilities as nearly as possible in their present condition or as hereafter improved.

(b) Road Repairs. Each party using any portion of the Roads shall repair, or cause to be repaired, at its sole cost and expense, that damage to the Roads occasioned by it which is in excess of that which it would cause through normal and prudent usage of the Roads. Should inordinate damage to the Roads occur which is not caused by an authorized user of the Roads, the Parties shall meet to agree upon the cost of replacement, the party to undertake the replacement, and shares of replacement cost to be borne by each user of the Roads.

(c) Road Improvements. Unless the Parties 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.

(d) Exercise of Rights. Grantee may permit its agents, contractors, licensees, vendors, lessees, and their agents, herein individually referred to as "**Permittee**" and collectively referred to as "**Permittees**," to exercise the rights of Grantee under the Easements in connection with the real property in the Surrounding Area then owned by Grantee, provided such Permittees' use of the Burdened Property is in accordance with this Agreement. Grantee shall be liable for the actions of any Permittees as if such actions were those of Grantor.

(e) Assignment. Except as set forth in Section 5(d), Grantee's rights under this Agreement are non-assignable and non-transferrable.

(f) Compliance with Laws and Regulations and Safety Rules. Grantee will comply with all applicable federal, state, and local laws, regulations, and ordinances, including but not limited to those governing the construction, reconstruction, use, and maintenance of the Roads. In using the Roads, Grantee and any Permittee will comply with any safety rules Grantor establishes regarding the use of the Roads.

(g) Fire Protection. When using the Easements, Grantee and its Permittees will exercise the highest degree of care to prevent fires on the Burdened Property, and will maintain all fire-fighting equipment required by applicable law. Grantee will make every reasonable effort, at its sole expense, to control, extinguish, or prevent the spread of fire on, to, or from the Easements or the Burdened Property, and will immediately report to Grantor any fire which may arise upon or threaten the Burdened Property or adjoining lands.

(h) Termination. Grantor may terminate the Easements upon prior written notice to Grantee if either of the following shall have occurred, *provided* that Grantee first shall have been given the opportunity to cure any such noncompliance within ten (10) business days following the date of delivery of Grantor's notice: (i) the Easements are used for any purpose not permitted under this Agreement, including, without limitation, use of water drawn from the Well under the Easements for any purpose not permitted under this Agreement, or (ii) Grantee fails to make any payment under this Agreement as and when due. The Easements automatically terminate if the Easements are unused by the Grantee for any consecutive period of five (5) years

(it being understood that for purposes of this Agreement, the term "unused" means that Grantee has not made any payment under Section 3(a) of this Agreement). The Easements automatically terminate at such time as Grantee no longer owns fee title to any land in the Surrounding Area.

(i) Notices. All (i) payments required under Section 3(a), and (ii) notices, requests, demands, consents, approvals, declarations and other communications required by this Agreement shall be in writing and shall be deemed made and delivered (a) if given by first-class U.S. mail (certified and return-receipt requested), when delivered, (b) if given personally, when received, and (c) if given by an internationally recognized overnight courier, when received or personally delivered, in each case, with all charges prepaid and addressed as follows, or to such other address as any party shall specify in a notice delivered to all other parties in accordance with this Section 5(i):

(i) if to Grantor:

JWTR Oregon, LLC
2636 Biehn Street
Klamath Falls, OR 97601
Attention: President

(ii) if to Grantee:

Green Diamond Resource Company
1301 Fifth Avenue, Suite 2700
Seattle, WA 98101

Any party hereto may change its address for notices and other communications hereunder by written notice delivered to the other party in accordance with this Section 5(i).

(j) Communication with DWR. Each party shall furnish the other party with advance copies of any application or other communication made by such first party or its Permittees to the Oregon Department of Water Resources relating to the Well or use of the Well.

(k) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Oregon.

(l) Counterparts. This Agreement may be executed in counterparts and each counterpart shall be deemed to be an original, but all of which together will constitute one and the same instrument upon delivery of one such counterpart by each of the Parties.

[Signatures and Acknowledgements Follow]

IN WITNESS WHEREOF, the Parties execute this Agreement with the intent that it be effective as of the day and year first written above.

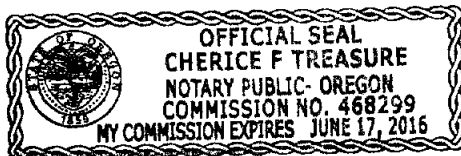
JWTR OREGON, LLC,
an Oregon limited liability company

By: JWTR, LLC,
an Oregon limited liability company
its Manager

By: Samuel D. Porter
Printed Name: President
Title: Samuel D. Porter

STATE OF OREGON)
)ss.
County of Klamath)

The foregoing instrument is acknowledged before me this 27 day of September, 2014,
by Samuel D. Porter as President of JWTR, LLC, the Manager
of JWTR Oregon, LLC.



Cherice F. Treasure
Notary Public for Oregon
Commission No.: 468299
My commission expires: 6/17/2016

[SIGNATURE PAGE TO WELL EASEMENT AGREEMENT]

EXHIBIT A

Burdened Property

The following described real property located in Klamath County, Oregon:

Section 28: $S\frac{1}{2}$ of $NW\frac{1}{4}$ of $NW\frac{1}{4}$
 $N\frac{1}{2}$ of $SW\frac{1}{4}$ of $NW\frac{1}{4}$

Section 29: $S\frac{1}{2}$ of $NE\frac{1}{4}$ of $NE\frac{1}{4}$
 $SE\frac{1}{4}$ of $NE\frac{1}{4}$
 $S\frac{1}{2}$ of $SW\frac{1}{4}$ of $NE\frac{1}{4}$
 $N\frac{1}{2}$ of $NW\frac{1}{4}$ of $SE\frac{1}{4}$

Township 34 South, Range 14 East, Willamette Meridian.

EXHIBIT B

Surrounding Area

The following described real property located in Klamath County, Oregon:

Township 33 South, Range 14 East, W.M.
Township 33 South, Range 15 East, W.M.
Township 34 South, Range 12 East, W.M.
Township 34 South, Range 13 East, W.M.
Township 34 South, Range 14 East, W.M.
Township 34 South, Range 15 East, W.M.
Township 35 South, Range 12 East, W.M.
Township 35 South, Range 13 East, W.M.
Township 35 South, Range 14 East, W.M.
Township 35 South, Range 15 East, W.M.
Township 36 South, Range 15 East, W.M.