

2023-001500

Klamath County, Oregon

03/06/2023 10:37:02 AM

Fee: \$97.00

**After Recording Return To:**

Ethan Hasenstein  
Knife River Corporation - Northwest  
32260 Old Highway 34  
Tangent OR 97389

**RESTRICTIVE COVENANT**

DATED: February 27, 2023

BETWEEN: Janice M. Fleming, Trustee  
Fleming Living Trust UTA June 7, 1994  
4500 O'Connor Road  
Klamath Falls, OR 97603

("GRANTOR")

AND: Knife River Corporation - Northwest, an Oregon corporation  
32260 Old Highway 34  
Tangent, OR 97389

("GRANTEE")

A. THIS RESTRICTIVE COVENANT ("Covenant") is hereby granted by Grantor as the owner of the real property described as follows and hereafter referred to as "Grantor's Property":

1. Grantor's Property is more fully described on Exhibit B attached hereto and incorporated herein full by this reference.

B. This Covenant is granted for the benefit of Grantee, and its successors and assigns, and also to benefit the real property described as follows and hereafter referred to as "Benefited Property:"

1. The Benefited Property is more fully described on Exhibit A attached hereto and incorporated herein full by this reference.

C. Grantor hereby grants to Grantee the Covenant on Grantor's Property for the benefit of the Benefited Property as follows:

1. Lessor warrants that it is the sole owner of Lessor's Property.

2. **Waiver of Right to Object.** Grantor hereby acknowledges, by granting this Covenant, that the Benefited Property is under Lease, a Memorandum of which is recorded as Document No. 2023-001134 in the Clerk's Records of Klamath County, Oregon, to Grantee by Grantor and that Grantor's Property is also situated adjacent to or nearby the Benefited Property, and that Grantor's Property may be subjected to conditions resulting from aggregate extraction and processing activities that occur on the Benefited Property. Aggregate extraction and processing activities include, but are not limited to, extraction, crushing, washing, milling, screening, overburden removal, road construction and maintenance, sorting, stockpiling, batching and blending mineral and aggregate into asphalt and concrete, transportation, geophysical testing, drilling, and other uses. These aggregate extraction and processing activities ordinarily and necessarily produce noise, dust, traffic and other conditions, which will be controlled within the requirements of local, state and federal laws and regulations, by Grantee, and its successors and assigns. Accordingly, and so long as Grantee is in compliance with applicable federal, state, and local laws and applicable permits, Grantor hereby waives any and all rights that Grantor may have to object to the aggregate extraction and processing activities conducted on the Benefited Property.

3. **Covenant of Noncompetition.** Grantor hereby acknowledges that as an inducement for Grantee to enter into the Lease and pay royalties thereunder, that during the Term of the Lease and any extensions or renewals thereof, Grantor shall not use or permit use of Grantor's Property, in whole or in part, for the (i) mining, excavation, processing, or extraction of sand, gravel, overburden, dolomite, limestone, sandstone, boulders, stone, aggregate, or rock suitable for use in building, construction, and road construction (including concrete, asphalt, roadbeds, railroad ballast, or other use); provided, however, that this restriction shall not apply to non-commercial site development, excavation, grading, and maintenance activities conducted by Grantor for Grantor's own benefit; (ii) operation of an asphalt plant or asphalt-related business; and (iii) operation of a concrete batch plant of concrete-related business. Provided, however, that this covenant shall not restrict Grantor or Grantor's successors from entering into an agreement with Grantee for the use of Grantor's Property for the foregoing purposes.

4. If a legal proceeding is undertaken to enforce any part of this Covenant, the prevailing party shall be entitled to its reasonable costs, including, without limitation, costs arising out of delayed aggregate extraction, processing and sale, and attorneys' fees before trial, at trial, or on appeal.

5. If any clause, phrase, or paragraph, or any part thereof, of this Covenant is found to be unenforceable, that clause, phrase, or paragraph, or any part thereof, shall be deemed severed, and the remainder of this Covenant shall continue in full force and effect.

6. This Covenant shall be recorded in the real property records of the county where the Benefited Property and the Grantor's Property are located.

D. This Covenant is appurtenant to the Benefited Property and shall run with the land and be binding on each and every lot created within Grantor's Property, and shall bind the heirs, successors, and assigns of Lessor and shall endure for the benefit of Lessee, its successor and assigns, and each of them.

E. Nothing in this Covenant shall be construed to limit the rights and obligations of the Parties under the Lease.

LESSOR:

Ross Fleming

Ross Fleming, by Power of Attorney

Janice M. Fleming, Trustee

Date: Feb. 27<sup>th</sup>, 2023

LESSEE:

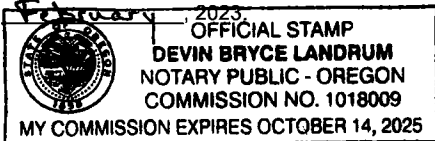
Ethan H

Ethan Hasenstein, Assistant Secretary

Date: March 6, 2023

STATE OF OREGON )  
 ) ss.  
County of Klamath )

This Instrument was acknowledged before me by Ross Fleming, by Power of Attorney, Janice M. Fleming, Trustee on the 27<sup>th</sup> day of February, 2023.



Devin Landrum  
NOTARY PUBLIC FOR Oregon  
My Commission Expires: 10.14.25

STATE OF OREGON )  
 ) ss.  
County of Linn )

This Instrument was acknowledged before me by Ethan Hasenstein, Assistant Secretary of Knife River Corporation - Northwest, an Oregon corporation, on the 6<sup>th</sup> day of March, 2023.



Ellen Rae Gerig  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: April 20, 2024

**EXHIBIT A**  
**REAL PROPERTY DESCRIPTION**

Real property in Klamath County, Oregon, to wit:

Township 40 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

Section 23: SE1/4 NW1/4 and SW1/4 NE1/4 (Tax Lot 4009-00000-2300); W1/2 SE1/4 (Tax Lot 4009-00000-02700); E1/2 SW1/4 (Tax Lot 4009-00000-02600); E1/2 NE1/4 (Tax Lot 4009-00000-02200)

Section 26: NW1/4 NE1/4 (Tax Lot 4009-00000-02700)

**EXHIBIT B**  
**GRANTOR'S PROPERTY**

Township 40 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon:

Section 14: S1/2 (Tax Lots 4009-01400-00700, -00800, -00900, -01000, and -01100)

Section 15: SE1/4; N1/2 SW1/4; all that portion of the NW1/4 NW1/4 and of the S1/2 NW1/4 described as follows: Beginning at the corner common to Sections 9, 10, 15 and 16: thence East 183 feet; thence South 38°43' West 25 feet; thence South 7°30' West 370 feet; thence South 20°00' West 385 feet; thence South 33°15' East 425 feet; thence South 12°00' East 435 feet; thence South 56°30' East 350 feet; thence South 43°20' East 290 feet; thence South 18°30' East 300 feet; thence South 27°45' East 250 feet; thence South 80°00' East 190 feet; thence North 76°30' East 520 feet; thence South 76°00' East 345 feet; thence South 89°00' East 490 feet; thence South 65°30' East 30 feet; thence South to the Southeast corner of the SE1/4 NW1/4 of said Section 15: thence West along the South line of said NW1/4 of said section 15, to the quarter corner common to Sections 15 and 16: thence North along the section line to the point of beginning. (Tax Lots 4009-00000-00200, -00300, and -00400)

Section 16: S1/2; E1/2 NW1/4; W1/2 NE1/4; SE1/4 NE1/4 (Tax Lots 4009-01600-00200 and -00400)

Section 22: E1/2 NE1/4, NE1/4 SE1/4 (Tax Lot 4009-00000-01800)

Section 23: NW1/4 NW1/4 (Tax Lot 4009-00000-01900); NE1/4 NW1/4 (Tax Lot 4009-00000-02000); NW1/4 NE1/4 (Tax Lot 4009-00000-02100); NW1/4 SW1/4 (Tax Lot 4009-00000-02500)