

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Conveying and Accepting a Reciprocal Easement from Evenson Timberland Agency, Inc for Ingress and Egress Between Abutting Properties)
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ORDER NO. 42-01

WHEREAS, ORS 271.310 authorizes Columbia County to convey a reciprocal easement over property it possesses or controls if not needed for the public interest; and

WHEREAS, Columbia County owns and controls certain real property ("County Property") which is described as:

All property located in Sections 19 and 20, Township 6 North, Range 3 West; and

WHEREAS, Evenson Timberland Agency, Inc., has power of attorney and manages property ("Evenson Property") on behalf of Claruth, Inc., Willna, Inc., and Franbea, Inc., which is described as:

All property located in Sections 24 and 25 of Township 6 North, Range 4 West, and Sections 19 and 20 of Township 6 North, Range 3 West; and

WHEREAS, the County Property and Evenson Property are abutting; and

WHEREAS, the County wishes to use a road on Evenson property for ingress and egress to County Property; and

WHEREAS, Evenson wishes to build an extension road on County Property in order to connect its roads to Evenson property to the North and East and to use such extension roads for ingress and egress; and

WHEREAS, the public interest may be furthered by conveying and accepting said easements which are shown in Exhibit "A" to the Reciprocal Easement Agreement which is attached hereto as Attachment "1," and is incorporated herein by this reference;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- 1) The Board of County Commissioners for Columbia County shall sign the Reciprocal Easement Agreement granting and accepting an easement for ingress and egress, which is attached hereto as Attachment "1."
- 2) Once signed, the Reciprocal Easement Agreement by and between Columbia County and Evenson Timberland Agency, Inc., shall be recorded in the deed records of Columbia County without costs.

DATED this 9th day of May, 2001.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Tyson
Office of County Counsel

By: [Signature]
Chair

By: [Signature]
Commissioner

By: [Signature]
Commissioner

**RECIPROCAL EASEMENT AGREEMENT
BY AND BETWEEN
COLUMBIA COUNTY and
EVENSON TIMBERLAND AGENCY, INC.**

THIS RECIPROCAL EASEMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into by and between **COLUMBIA COUNTY**, a political subdivision of the State of Oregon, (hereinafter referred to as "County,") and **EVENSON TIMBERLAND AGENCY, INC.** (hereinafter referred to as "Evenson").

WHEREAS, Evenson manages property in Columbia County, Oregon, owned by Claruth, Inc., Willna, Inc., and Franbea, Inc., in undivided one-third interests (hereinafter referred to as "CWF property,"), as their attorney-in-fact; and

WHEREAS, County owns property abutting CWF property in Columbia County, Oregon, (hereinafter referred to as "County property"); and

WHEREAS, a logging road passes through CWF property onto County property; and

WHEREAS, County wishes to use said road for ingress and egress to County property; and

WHEREAS, roads on County property extend from the road on CWF property to the North and East; and

WHEREAS, Evenson wishes to build extension roads off of said roads on County property in order to connect said roads to CWF property to the North and East, and to use said extended roads for ingress and egress to CWF property;

NOW, THEREFORE, the parties hereby agree as follows:

1. Reciprocal Right of Way Easements.

- A. Evenson, as attorney-in-fact for Claruth, Inc., Willna, Inc., and Franbea, Inc. grants to County a non-exclusive right of way easement over and across a road on CWF property described as,

All property owned by Claruth, Inc., Willna, Inc., and Franbea, Inc., located in Sections 24 and 25 of Township 6 North, Range 4 West, and Sections 19 and 20 of Township 6 North, Range 3 West,

for the purpose of ingress and egress to County property for forest practices management and for logging.

- B. County grants to Evenson as attorney-in-fact for Claruth, Inc., Willna, Inc., and Franbea, Inc. a non-exclusive right of way easement over and across roads on County property described as,

All property owned by **COLUMBIA COUNTY** located in Sections 19 and 20, Township 6 North, Range 3 West,

to build extension roads from the ending point of said existing roads to the CWF property

line and for the purpose of ingress and egress to CWF property for forest practices management and for logging.

C. The roads over which easements are hereby granted are depicted in Exhibit A, which is attached hereto and is incorporated herein by this reference. The intent of Exhibit A, is to describe a series of roads which are currently in use to access the properties described herein, and to describe the location of the two extension roads that may be built by Evenson for access to CWF property. Exhibit A shows the general location of these roads. Should there be any question as to the actual location of these roads, and the actual marked location of the proposed extension roads, the roads, as they appear on the ground shall be considered the roads covered under this Agreement. The easements granted over said roads, are granted subject to the terms and conditions herein stated.

2. Term of Agreement: This Agreement shall take effect on the date that it is fully executed, and shall remain in effect until terminated by mutual agreement of the parties. Provided, however, that either party may terminate this Agreement at any time, with notice, in the event of the other's breach of any of the terms or conditions hereof. Upon such termination, the parties hereto shall release and extinguish their right of way easement rights by writing which shall be recorded in the deed records of Columbia County, Oregon.

3. Consideration: This Agreement is entered into for consideration. The sole consideration given is the reciprocal granting of right of way easements described herein.

4. Terms and Conditions. The Easements granted herein are granted subject to the following terms and conditions:

A. Definitions: For purposes of these Terms and Conditions, the terms "PERMITTEE" and "OWNER" are defined as follows:

"PERMITTEE": that party who crosses the lands of the other;

"OWNER": that party who owns or manages on behalf of owner, the lands being crossed by PERMITTEE.

The parties may each assume the role of either PERMITTEE or OWNER from time to time as the case may be.

B. Assumption of Risk and Liability:

i. Presentation of Warranty: Each party acknowledges that it has inspected the roads depicted in Exhibit A, knows the condition thereof and is entering into this Reciprocal Easement Agreement with full knowledge of the state and condition of the Roads. The OWNER makes no warranty or representation as to the present or future conditions of the Roads, or the character of the traffic on any of its roads, and PERMITTEE assumes all risks of damage to property or injury to PERMITTEE, and/or PERMITTEE's Agents, Officers, Employees, Vendors, Contractors, or Subcontractors in connection with the exercise of rights granted hereunder.

ii. PERMITTEE agrees to pay for all damage to OWNER's property resulting directly or indirectly from the negligent acts or omissions of the PERMITTEE, or PERMITTEE's Agents, Officers, Employees, Vendors, Contractors, or Subcontractors, hereunder, and shall reimburse OWNER for all costs reasonably incurred for fighting fire resulting directly or indirectly from the PERMITTEE's or PERMITTEE's Agents, Officers, Employees, Vendors, Contractors, or Subcontractors' acts or omissions hereunder, whether negligent or otherwise.

iii. Indemnification: PERMITTEE agrees to indemnify and hold harmless OWNER, and OWNER's Agents, Officers, Employees, Vendors, Contractors, and Subcontractors from and against any and all liability, damage, loss, expense, claim or demand therefor, including attorney's fees, suffered by or asserted against OWNER, and/or OWNERS's Agents, Officers, Employees, Vendors, Contractors, and Subcontractors as a result of any injury to or death of any person or persons including, without limitation, employees of the parties hereto, or loss or damage to any property including, without limitation, property of the parties hereto, resulting from or arising out of the performance or nonperformance of this Agreement by PERMITTEE, and/or PERMITTEE's Agents, Officers, Employees, Vendors, Contractors, or Subcontractors, except when such liability, damage, loss or expense is caused by the sole negligence of OWNER and/or OWNER's Agents, Officers, Employees, Vendors, Contractors, or Subcontractors, or conditions created solely by OWNER and/or OWNER's Agents, Officers, Employees, Vendors, Contractors, or Subcontractors. PERMITTEE agrees, upon OWNER's request, to assume without expense to OWNER, the defense of any claim, demand, action or cause of action, in accordance with this Agreement. This paragraph is subject to the limits and provisions of Article XI, Section 10 of the Oregon Constitution and ORS 30.260 through 30.300, the Oregon Tort Claims Act.

iv. Insurance Requirements:

PERMITTEE shall obtain, at its own cost and expense, and maintain during the entire term PERMITTEE intends to travel upon, over or across the property of OWNER, with insurance carriers authorized to do business in the State of Oregon, the following insurance coverage:

- a. Comprehensive general liability insurance of not less than 2,000,000 combined single limit for bodily injury and property damage providing coverage for operations and independent contractors.
- b. Automobile liability insurance with limits of not less than:
\$1,000,000 per person,
\$1,000,000 per occurrence for bodily injury, and
\$1,000,000 per occurrence for property damage; providing coverage for owned automobiles, non-owned automobiles, and hired automobiles.

Said policies shall name OWNER as an additional insured with respect to performance of this Agreement. Said policies shall include an endorsement that they will not be terminated, reduced or materially changed without thirty (30) days prior written notice to OWNER. Before exercising any rights granted hereunder, PERMITTEE shall deliver to OWNER certificates from PERMITTEE's insurance carrier evidencing the coverage outlined above.

- C. Compliance with Laws and Regulations. PERMITTEE shall comply with all applicable laws, statutes, ordinances and regulations of Federal, State and local governments and agencies thereof, including, but not limited to, those relating to surface mining, forestry and conservation practices and the prevention, suppression and control of fire, and all valid orders of Federal, State, and local officials pertaining thereto. PERMITTEE shall be responsible for and shall obtain all permits and licenses required in its use of OWNER's property for purposes stated herein.

D. Fire Protection and Suppression:

For the protection of OWNER's land and timber in the vicinity of the Premises:

- i. PERMITTEE agrees to dispose of all slashing and debris created by PERMITTEE's operation on the Premises in a manner satisfactory to OWNER and upon such disposal PERMITTEE shall, if required to do so by OWNER or by government officials, promptly obtain an unconditional certificate of clearance with respect to the slashings so disposed of and deliver the same to OWNER;
- ii. Upon discovery of any fire on or in the vicinity of the Premises PERMITTEE shall immediately notify OWNER and the nearest State Fire Warden and shall use all its equipment and employees that may be safely employed to suppress any such fire, regardless of the cause or origin of the fire.

E. Easements Appurtenant. The right of way easements granted herein are appurtenant to the land and rights under such easements run with the land, subject to the terms and conditions of this Agreement. Such easement rights are not otherwise assignable or transferrable.

F. Use and Maintenance of Premises.

- i. It is understood and agreed that PERMITTEE shall not commit or suffer to be committed any waste upon the roads nor allow or cause the roads to be used for any improper or unlawful purpose. PERMITTEE shall use the roads in a manner that will not unduly interfere with others' use of the roads.
- ii. PERMITTEE agrees to neither cut, damage nor destroy or remove any of OWNER's timber, without OWNER's prior written permission, except that:
 - A. Trees fallen across the road may be bucked and moved off the road;
 - B. Trees that pose an immediate danger to life or property to such a degree that immediate action is prudent, may be felled;
 - C. In construction of any new extension roads, trees may be felled but shall remain the property of OWNER. Prior to the felling of any such trees, PERMITTEE shall obtain the written permission of OWNER.
 - D. When trees are felled, they should be bucked in a manner that maintains their economic value to as great a degree as possible and any logs should be placed in a position where they are readily accessible to the OWNER. The PERMITTEE shall notify the OWNER of any tree cutting as soon as possible.

Except as expressly provided herein, the cutting, damaging or destroying of any such timber on OWNER's property shall be considered willful trespass and PERMITTEE shall be liable to OWNER therefor in a sum equal to three times the damage sustained by OWNER on account of the cutting, damaging or destroying of such timber.

- iii. PERMITTEE agrees to maintain all roads used by PERMITTEE during periods of PERMITTEE's use, such that they remain at the same or better level of repair as they were prior to this Agreement, which shall be to a standard in compliance with the Oregon Forest Practices Act. During periods of inactivity, PERMITTEE shall not have a maintenance obligation. Any extension roads built under the terms of

this Agreement shall meet or exceed the standards of the Oregon Forest Practices Act.

- iv. PERMITTEE agrees to keep all roads open and not obstruct same nor land any logs or other forest products alongside said road nor load any trucks thereon without OWNER's written permission. However, PERMITTEE may install and maintain a system of gates in order to deny unauthorized access, provided that PERMITTEE provides OWNER and any other person authorized to use the road, with keys to such gate.
- v. This Permit shall be subject to traffic control and other regulations promulgated by OWNER from time to time, including the right of OWNER to close roads during periods of high fire danger or soft road conditions, provided OWNER shall also have suspended its operations near the Premises.
- vi. PERMITTEE shall comply with and observe all laws, rules, and regulations of the United States, the State of Oregon, Columbia County, and any other governmental entity having jurisdiction while utilizing right of way easements under this Agreement, or while otherwise on OWNER's property.

F. Non-Assignment. Neither this Agreement nor the right of PERMITTEE hereunder shall be assignable in whole or in part, by operation of law or otherwise, without the prior written consent of OWNER thereto.

5. Notice. Any notice or demand required or permitted to be given under the terms of this Agreement shall be deemed to have been duly given if served personally or if deposited in the United States mail in a sealed envelope, postage prepaid, by registered or certified mail, addressed to the party to be served at the address set forth below; and such service by registered mail shall be equivalent to personal service.

FOR COUNTY:

Dave Hill
Director of Parks
Columbia County Courthouse
St. Helen, Oregon 97051

FOR EVENSON:

Eric Evenson
Evenson Timberland Agency, Inc.
P.O. Box 127
Clatskanie, Oregon 97016

6. Waiver. Any failure by either party to exercise a right to terminate this Agreement in case of default by the other party shall not constitute a waiver of any obligation to perform strictly in accordance with the terms and conditions of the Permit.

7. Entire Agreement. This Reciprocal Easement Agreement contains the entire agreement of the parties concerning the subject matter hereof, and no provision hereof may be modified, waived or amended except in writing signed by the parties hereto.

8. Representations. The parties hereto expressly represent that each has the legal authority to grant the easements described herein. Should either party be found to not have such authority, this Agreement shall terminate, and the easements granted herein shall be released and extinguished according to Section 2 of this Agreement.

8. Venue. Any claim, whether for damages, or otherwise, arising out of this Agreement, shall be brought in the Circuit Court of Columbia County, Oregon.

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9. Signature. By affixing their signature below the parties hereto do grant and accept reciprocal easements to the property as described herein.

IN WITNESS WHEREOF, we have signed this document this ____ day of _____, 2001.

Approved as to Form

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____
Office of County Counsel

By: _____
Chair

By: _____
Commissioner

By: _____
Commissioner

STATE OF OREGON)
) ss.
County of Columbia)

The foregoing instrument was acknowledged before me this ____ day of _____, 2001, by Rita Bernhard, Anthony Hyde and Joe Corsiglia, County Commissioners for Columbia County, a political subdivision of the State of Oregon.

Notary Public for Oregon
My commission expires: _____

EVENSON TIMBERLAND AGENCY, INC.

By: Deborah A. Brown
President (Title)

Date: 4-19-01

By: Bonnie J. Evenson
Secretary (Title)

Date: 4/19/01

STATE OF OREGON)
) ss.
County of Columbia)

The foregoing instrument was acknowledged before me this 19th day of April, 2001, by ~~Bonnie~~ Deborah L. Evenson, and Deborah A. Brown, as ~~President & Secretary~~ of Evenson Timberland Agency, Inc.

Denise M. Palm-Ylen
Notary Public for Oregon
My commission expires: 6-4-2004

After recording, return to:
Columbia County Counsel
Rm. 318 Courthouse
St. Helens, OR 97051

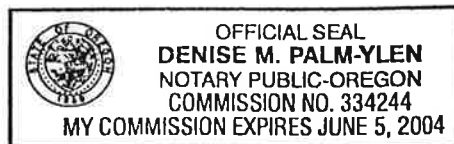


EXHIBIT "A"

