

MT-66870 LR

Vol M04 Page 62641

State of Oregon, County of Klamath  
Recorded 09/17/04 3:48 p m  
Vol M04 Pg 62641-45  
Linda Smith, County Clerk  
Fee \$ 41.00 # of Pgs 5

After recording return to: **Pine Cone, LLC**  
**P.O. Box 257**  
**Klamath Falls, OR 97601**

### **LAKE EWAUNA TRAIL EASEMENT**

This Easement Agreement is made and entered into this 24<sup>th</sup> day of August, 2004, by and between Pine Cone, LLC., an Oregon limited liability company, Grantor, and the County of Klamath, a Public Body, Grantee.

### **RECITALS**

This easement is being purchased with Klamath County funds received from the Federal Government in accordance with Title III of Public Law 106-393 (Title III).

Grantor is the owner of certain real property which abuts the northern and eastern shoreline of Lake Ewauna, in the City of Klamath Falls, Oregon, and which is more particularly described in the deeds recorded in Vol. M 01 at page 29956 and M 01, page 29957 of the deed records of the clerk of Klamath County, Oregon.

Grantor's land abutting the shoreline of Lake Ewauna has scenic, natural, cultural, historic, recreational and aesthetic value. Lake Ewauna and the waters thereof are public lands owned by the State of Oregon. This easement provides public access for recreational purposes to over a mile of the shoreline of Lake Ewauna. Grantor's land is commonly known as TimberMill Shores and is presently subject to the covenants, conditions, development standards, and restrictions set forth in the Declarations of TimberMill Shores recorded in Vol. M 01 beginning at page 29962 of the deed records of the Clerk of Klamath County, Oregon. However, Grantor agrees to amend said Declarations as soon as possible to remove the Easement area from the purview of said Declarations. The area is a portion of the former Modoc Lumber Company site, which was in business from 1940 to 1994.

Grantor is willing to grant a perpetual recreation and public access easement over Grantor's real property, thereby restricting and limiting the use of the subject property on the terms and conditions and for the purposes set forth herein, and Grantee is willing to accept such easement.

### **AGREEMENT**

THE PARTIES HERETO ACKNOWLEDGE THAT THIS EASEMENT IS AN EASEMENT AS DESCRIBED IN PUBLIC LAW 106-393, SECTION 302(b)(3) AND THAT IN THE EVENT THERE IS A CONFLICT BETWEEN TITLE III REQUIREMENTS AND OTHER REQUIREMENTS, SUCH AS, BUT NOT LIMITED TO, THOSE OF TIMBERMILL SHORES OR THOSE OF THE CITY OF KLAMATH FALLS, THE TITLE III REQUIREMENTS ARE PARAMOUNT AND SHALL OVERRIDE ALL OTHERS.

In consideration for the payment of the sum of \$300,000.00, receipt of which is hereby acknowledged, and in consideration of the covenants, terms, conditions, and restrictions set forth

4/10 am

below, Grantor hereby grants and conveys to Grantee, in favor of, and for the use and benefit of the general public, a perpetual Easement for the purposes of recreation and non-motorized public access on, over, and under the following described land:

**Trailhead:** A Parcel of Land Situated in the NE¼ SW¼ of Section 32, T38S, R9E of the Willamette Meridian, Klamath County, Klamath Falls, Oregon, being more particularly described as follows:

Beginning at the northeasterly corner of that property shown in County Survey Number 2618, as filed at the Klamath County Surveyors Office, said point being marked with a 5/8" rebar; thence, along the Southeasterly right-of-way of Klamath Avenue, N.66°47'26"E. 430.95 feet; thence, leaving said right-of-way, S.23°06'03"E. 199.23 feet to the mean high water Line of Lake Ewauna; thence along said mean high water line, S.65°44'17"W. 389.37 feet; thence continuing along said mean high water line, S.83°10'50"W. 36.96 feet; thence continuing along said mean high water line, N.28°58'14"W. 60.44 feet to a 5/8" rebar per said County Survey Number 2618; thence leaving said mean high water line, N.23°06'03"W. 135.82 feet to the Point of Beginning.

**Trail:** A strip of land 30 feet in width contiguous to and measured at right angles from the mean high water line of Lake Ewauna beginning at the Southeast corner of the Trailhead parcel described above and terminating at a point marked by a steel fence post located as follows:

Commencing at a 1-inch iron pipe marking the Northeast corner of Government Lot 9 of said Section 4; thence South 00 degrees 23' 00" East, 1,320.14 feet to a 1-inch pipe on the North line of Lot 79 of Enterprise Tracts, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, thence South 89 degrees 48' 30" West along the North line of said Lot 79, 688.46 feet to a one-inch iron pipe; thence continuing South 89 degrees 48' 30" West, 30.00 feet to a point on the bank of Lake Ewauna; thence Southerly following the bank of Lake Ewauna the following courses and distances: South 05 degrees 25' 14" West, 49.12 feet; South 24 degrees 40' 19" East, 325.16 feet; South 11 degrees 25' 13" East, 518.73 feet; South 14 degrees 52' 57" East, 209.20 feet; South 05 degrees 41' 51" East, 168.92 feet; South 05 degrees 02' 49" West, 1,126.98 feet to said steel fence post, in Section 4, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

This Easement is granted subject to easements and rights of way of record, including, but not limited to, agreements and easements for the regulation and control of the elevation of the water surface of Lake Ewauna and easements and rights of way for the railroad line which crosses Lake Ewauna at the southern terminus of the Trail.

The use and development of this Easement shall be subject to the following terms and conditions:

1. Grantee's strict compliance with:

- a. the City of Klamath Falls Community Development Ordinance, all amendments thereto, and applicable zone change ordinances, orders, and decisions duly issued pursuant to the Development Ordinance;
- b. the Klamath Falls Lakefront Urban Renewal Plan; and
- c. all other applicable laws, regulations and rules, including, but not limited to state lands fill and removal and wetland regulations.

2. Grantor may, consistent with the Declarations of TimberMill Shores and the development plans for Grantor's land, as approved by the Grantee and the City Planning Department and at Grantor's expense, link the Trail Easement to the integrated pedestrian circulation systems of TimberMill Shores.

3. Grantor shall not develop, improve, or change the Easement area if such actions would interfere with the purposes of the Easement, and Grantor shall obtain Grantee's prior written consent to any proposed development, improvement or change in the Easement area. Development of areas adjacent to the Easement area shall not materially interfere with the purposes of this Easement.

4. No sign or advertisement of any kind shall be erected, displayed, placed or maintained within or upon the Easement area, except such signs and monuments as are appropriate to delineate the Easement area, to enhance enforcement of use regulations and public enjoyment of the Easement area and to communicate historic, natural, aesthetic, recreational, cultural and scenic information to the Easement users. No building or structure of any kind shall hereafter be erected within the Easement area except for uses incident to the reasonable enjoyment of the Easement as determined in the sole discretion of Grantee. The parties agree that appropriate development of the Easement Area may include, but not be limited to: benches and bench shelters; lighting and electrical equipment for a Lake Ewauna fountain; fencing; boat and fishing docks; viewing platforms; informational and interpretive signs and monuments; garbage receptacles; bike racks; bridges; water bars; removable bollards for construction, maintenance and emergency vehicle access; rip-rap; landscaping, including native and non-native plants, irrigation systems, trees, shrubs, grasses and groundcovers; a trail consisting of gravel, paving stones, boardwalk, concrete, asphalt, and/or geothermal heating approximately ten to fourteen feet wide; decorative boulders; and habitat structures such as downed trees.

5. Grantee agrees to indemnify, defend and hold Grantor harmless from any loss, claim or liability to Grantor arising out of the Easement and as a result of Grantee's negligent or wrongful act. No provision of this Easement shall be interpreted or applied to waive any statutory limitation of liability which the parties may have, including, but not limited to the provisions of ORS 105.672 to 105.696 and ORS 30.260 to 30.300.

6. Grantee shall not allow public use of the Easement area until such time as the boundaries of the Easement Area have been marked, the Trail and other amenities of the Easement area have been improved to provide safe access and use, and appropriate security is available to address vandalism and misuse of the Trail and trespassing by the public on Grantor's adjacent land; provided, however, that Grantee its lessees, successors, and assigns shall not be required to install fencing or other barrier along the entire length of the Trail. In the event that

the condition of the Easement Area becomes unsafe for use, public use of the Easement Area shall be restricted by the Grantee until the unsafe condition is corrected. At the time Grantor is prepared to sell or develop a lot in TimberMill Shores, then Grantor may make improvements to the Easement area or portions thereof consistent with the standards set forth in this Easement and Title III.

7. The Grantor and Grantee acknowledge that the Easement area and Grantor's adjoining lands were historically used as a wood products industrial site, and Grantor agrees that it is responsible for the remediation and clean-up costs for any hazardous substances, as defined in state and federal law, discovered in or upon the Easement area, provided that such hazardous substances were located within the Easement at the time of the grant of this Easement or migrate to the Easement area from Grantor's adjoining land. If Grantee discovers any hazardous substance on or about the Easement area, it shall immediately cease all activity on the impacted portion of the Easement area and shall immediately report such discovery to Grantor. Grantor shall, in strict conformance with the applicable laws and regulations, address the existence of the hazardous material in a manner approved by the Oregon Department of Environmental Quality. The parties acknowledge that such remedial actions may include leaving the hazardous substance undisturbed and covering it or other action that does not require the removal of the substance.

8. Grantee agrees that development of the Easement will be made in consultation with Grantor in order that such development will complement and enhance the adjacent TimberMill Shores development. Grantee agrees that it will, if reasonably possible, leave in place the wooden railroad bridge, the concrete log dump, and other historic structures located in the Easement area.

9. For purposes of complying with current and future land use plan requirements for set backs from property ownership lines, the Trail Easement area shall count toward any such set back; provided, however, that no construction or maintenance activities associated with the development of TimberMill Shores shall encroach onto the Easement area without prior, written consent of Grantee.

10. Grantee agrees that Grantor or other sponsors may conduct "music in the park" summertime concerts and 4<sup>th</sup> of July celebration activities on the Trailhead Easement area, subject to the Special Events regulations of the City of Klamath Falls, and that alcoholic beverages may be served subject to applicable regulations of the Oregon Liquor Control Commission and the City of Klamath Falls.

11. This Easement shall run with the land as to all land burdened and benefited by this Easement, including any division or partition of such property. The rights, covenants, terms, conditions and obligations of this Easement shall bind, burden and /or benefit each Party's Lessees, successors in interest, assigns and heirs and /or beneficiaries under a trust deed.

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Pine Cone, LLC.

Klamath County

By: 

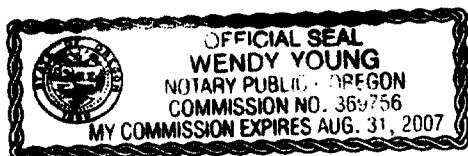
Robert J. Shaw, Operating Manager

By: Chairperson of Board of  
Commissioners

STATE OF OREGON            )  
  ) ss.  
County of Klamath         )

On this 18th day of August, 2004, personally appeared Robert J. Shaw, Operating Manager of Pine Cone, LLC. and being first duly sworn, did say that the instrument was executed on behalf of said company, and acknowledged said instrument to be its voluntary act and deed.

BEFORE ME:

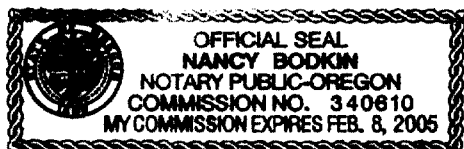


Wendy Young  
Notary Public for Oregon  
my Commission Expires: 8-31-2007

STATE OF OREGON            )  
  ) ss.  
County of Klamath         )

On this 24th day of August, 2004, personally appeared John Elliott, Chairperson of the Board of Commissioners of Klamath County, Oregon, and being first duly sworn, did say that the instrument was executed on behalf of said County, and acknowledged said instrument to be its voluntary act and deed.

BEFORE ME:



Nancy Bodkin  
Notary Public for Oregon