

2006-021777

Klamath County, Oregon



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## ROAD USE LICENSE AGREEMENT

This ROAD USE LICENSE AGREEMENT (the "Agreement") is made and entered into as of the 6<sup>th</sup> day of June, 2006, between CASCADE TIMBERLANDS (OREGON) LLC, a Delaware limited liability company ("Cascade"), and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Union Pacific").

### RECITALS

- A. Cascade is the owner of real property in the Northwest quarter of section 36, the Southwest quarter of section 13, and the Northwest quarter of section 24, all in Township 32 South, Range 7 East, Willamette Meridian, Klamath County, Oregon (the "Cascade Property").
- B. Union Pacific is the owner of real property in Klamath County, Oregon, located adjacent to or near the Cascade Property (the "Union Pacific Property").
- C. Union Pacific wishes to obtain and Cascade is willing to grant, a non-exclusive license over portions of three existing roads on the Cascade Property for the purpose of accessing the Union Pacific Property. The three roads are commonly referred to as Pig Lady Street, Dunivin Street, and South Fuego Street, and the portions subject to this Agreement are referred to herein individually as a "Road" and collectively as the "Roads." The license area consists of a strip of land ten (10) feet in width on each side of the centerline of each Road, the locations of which are approximately depicted on attached Exhibit A.

### AGREEMENT

THEREFORE, in consideration of the foregoing, the mutual covenants of the parties as set forth in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

- 1. Grant of License. Cascade hereby grants to Union Pacific a non-exclusive license to use the Roads for the sole purposes of vehicular access to and from the Union Pacific Property. Cascade reserves to itself and its successors and assigns the right (i) to go upon and use the Roads at any and all times and for any purpose, and (ii) to grant the right to use the Roads to other Persons (defined in Section 18) on such terms and conditions as Cascade may elect, so long as such use does not unreasonably interfere with the use of the Roads by Union Pacific as provided in this Agreement.
- 2. Relocation of Roads. Cascade reserves the right to relocate the Roads at any time and from time to time, so long as the Roads access the railroad tracks at approximately the same location as the Roads now access Union Pacific's tracks. In the event a Road is so relocated, Cascade shall be entitled to record an instrument describing the location of the Road as relocated and such instrument, which need not be executed or acknowledged by Union Pacific, shall be deemed an amendment of this Agreement and shall automatically extinguish the rights of Union Pacific hereunder with respect to the Road as previously located. Cascade shall give Union Pacific notice of any relocation of a Road.
- 3. Reservation of Timber. Cascade hereby reserves all timber now or hereafter growing within the Roads, including any relocation thereof pursuant to Section 2.

4. Use by Union Pacific. Union Pacific may permit its employees, agents, contractors, and subcontractors ("Permitted Users") to use the Roads for the purpose of vehicular access to and from the Union Pacific Property.
5. Compliance with Laws. In connection with its use of and activities on the Roads, Union Pacific shall at all times, and shall cause its Permitted Users at all times to, comply with all applicable federal, state, county, and local legal requirements.
6. Indemnity. Union Pacific assumes the risk of and shall indemnify and hold harmless Cascade and other Persons that Cascade may allow to use the Roads, their members, officers, agents and employees, as applicable, against and from any and all loss, damages, claims, demands, actions, causes of action, costs, attorney's fees, fines, penalties and expenses of whatsoever nature (hereinafter "Loss") which may result from:
  - a. injury to or death of any person (including members, officers, agents and employees of Union Pacific or Cascade, or other persons);
  - b. loss of or damage to any property (including damage to property of or in the custody of Cascade, as well as other property);
  - c. Union Pacific's failure to comply with any federal, state or local law, regulation, ordinance, or other enactment when such Loss is due to or arises in connection with or as a result of:
    - i. any maintenance work done by Union Pacific pursuant to Section 7 of this Agreement;
    - ii. the use of the Roads by Union Pacific or its Permitted Users;
    - iii. the use of the Roads by Union Pacific's successors or assigns, or the members, officers, agents, or employees of such successors or assigns, until Union Pacific complies with the provisions of Section 11 or the Agreement is terminated as provided in Section 10;
    - iv. the breach of any covenant or obligation assumed by or imposed on Union Pacific pursuant to this Agreement, or the failure of Union Pacific to promptly and fully do any act or work for which Union Pacific is responsible pursuant to this Agreement;

regardless of whether such Loss is caused solely or contributed to in part by the negligence of Cascade, its members, officers, agents, or employees.

7. Maintenance and Condition of Roads. Union Pacific and each Permitted User shall assume all risks associated with use of the Roads pursuant to this Agreement. Cascade does not warrant or guarantee the current or future condition of the Roads and shall be under no obligation whatsoever to Union Pacific or to any other Person to repair any damage to the Roads or to maintain the Roads in a usable condition. Union Pacific shall have no obligation to reimburse Cascade for any cost or expense it may incur in connection with repair and maintenance of the Roads as it may elect to undertake; *provided, however*, that in the event the Roads are damaged as a result of use by Union Pacific or its Permitted Users in excess of normal usage for access purposes, Cascade shall be entitled to recover from Union Pacific the actual and reasonable costs of repairing such damage. In the event Cascade fails to repair or maintain the Roads, Union Pacific shall be entitled to do so; *provided, however*, that Cascade shall have no liability whatsoever with respect to the costs of any

such maintenance and repair. Any repair or maintenance by Union Pacific shall be undertaken in a good workmanlike fashion and in compliance with all applicable legal requirements.

8. No Public Dedication. The Roads are and shall continue to be a private way for all purposes. Nothing contained in this Agreement shall be construed as a gift or dedication of any portion of the Roads to the general public or for any public use or purpose whatsoever, and Union Pacific shall not take any action which seeks to cause or could cause the conversion of the Roads from a private way to a public way. Except to the extent expressly set forth herein, no right or benefit of any party hereunder shall inure to the benefit of any person not a party hereto and no such third party shall be deemed a beneficiary of any of the provisions of this Agreement.
9. Insurance. Cascade acknowledges having been informed that Union Pacific self insures its general liability, property damage, automobile liability and licensed and leased property obligations through its risk management programs, with self insured retentions of varying amounts. Cascade agrees to accept prior to Union Pacific beginning any use hereunder, a letter confirming this coverage from Union Pacific's Risk Manager in lieu of an insurance policy or an insurance certificate, provided, however, that Cascade may in its sole discretion terminate this Agreement, or require proof of insurance satisfactory to Cascade, upon a determination by Cascade that such self insurance is not adequate to cover the risks associated with the uses permitted in this Agreement.
10. Default / Termination. It shall constitute an event of default if Union Pacific fails to perform any material obligation under this License Agreement within forty-five (45) days following receipt of written notice from Cascade, specifying the default in detail; provided, however, that if due to the nature of such breach, cure is not reasonably possible within such forty-five (45) day period, Union Pacific shall not be deemed in breach if cure is commenced with the initial forty-five (45) day period and diligently pursued to completion.

Upon the occurrence of an event of default, Cascade at any time following written notice and the expiration of the applicable cure period may terminate Union Pacific's right to use the Roads pursuant to this License Agreement. A waiver by Cascade of a breach by Union Pacific shall not impair the right of Cascade to terminate this Agreement for any subsequent breach by Union Pacific.
11. Assignment. Union Pacific shall not assign this Agreement or any interest therein to any purchaser, lessee or other holder of the Union Pacific Property served by the Roads or to any other Person, without the prior written consent of Cascade, which consent shall not be unreasonably withheld. If Union Pacific fails to obtain Cascade's consent to any assignment, Union Pacific will continue to be responsible for obligations and liabilities assumed herein.
12. Waiver. Any party's failure to exercise, delay in exercising, or partial exercise of any right or remedy under this Agreement shall not constitute a waiver of that or any other right or remedy hereunder. A waiver of a breach of any provision of this Agreement shall not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself. No waiver of any provision of the Agreement shall be binding on a Party unless it is set forth in writing and signed by such Party.
13. Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; or (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Notices shall be deemed received at the earlier of actual receipt or one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (ii) four (4) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the

manner described above:

Olympic Resource Management LLC  
c/o Cascade Timberlands (Oregon) LLC  
920 SW Emkay Drive, Suite 105  
Bend, OR 97702

Union Pacific Railroad Company  
Attn: AVP Real Estate, Folder #2374-94  
1400 Douglas Street, STOP 1690  
Omaha NE 68179-1690

14. Amendment. Except as set forth in Section 2 with respect to a relocation of the Roads, this Agreement may not be amended or modified except by a written agreement signed by the Parties.
15. Attorney's Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with this Agreement, or to interpret or enforce any rights or remedies hereunder, the prevailing party shall be entitled to recover its attorney's fees and all other fees, costs, and expenses actually uncured and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.
16. Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable, then (i) such provision shall be enforceable to the fullest extent permitted by applicable law, and (ii) the validity and enforceability of the other provisions of this Agreement shall not be affected and all such provisions shall remain in full force and effect.
17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon (without regard to the principles thereof relating to conflicts of laws).
18. Construction and Interpretation. The headings or titles of sections in this Agreement are intended for ease of reference only and shall have no effect whatsoever on the construction or interpretation of this Agreement. References herein to sections are to sections of this Agreement unless otherwise specified. Meanings of defined terms used in this Agreement are equally applicable to singular and plural forms of such defined terms. As used herein, (i) "Person" means any individual, partnership, corporation, limited liability company, trust, unincorporated association, or other organization, whether or not a legal entity, (ii) the terms "Party" and "Parties" respectively refer to a party or both parties to this Agreement, unless otherwise specified, (iii) the terms "hereof", "herein", "hereunder", and similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement, and (iv) the term "including" is not limiting and means "including without limitation."
19. Counterpart Execution. This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set above.

CASCADE TIMBERLANDS (OREGON) LLC  
By: OLYMPIC RESOURCE MANAGEMENT, LLC  
Its Manager

By Thomas M. Ringo  
Its Vice Pres & CFO

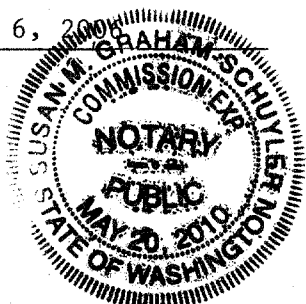
UNION PACIFIC RAILROAD COMPANY

By Steve Sand  
Its Asst. Director - Acquisitions

STATE OF WASHINGTON )  
ss.)  
COUNTY OF KITSAP )

I certify that I know or have satisfactory evidence that Thomas M. Ringo is the person who appeared before me, and he acknowledged that he signed this instrument and that he is authorized to execute the instrument and acknowledged it as the Vice President and CFO of Olympic Resource Management, LLC a Washington limited liability company, Manager of Cascade Timberlands (Oregon) LLC, a Delaware limited liability company, to be the free and voluntary act of the company and for the uses and purposes mentioned in this instrument.

Dated: June 6, 2006



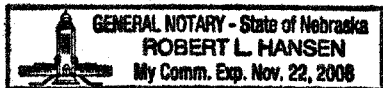
Susan M. Graham-Schuyler  
NOTARY PUBLIC for the State of  
Washington  
Susan M. Graham-Schuyler  
My appointment expires: May 20, 2010

ACKNOWLEDGMENT

STATE OF NEBRASKA )  
ss.)  
COUNTY OF DOUGLAS )

On this 6<sup>th</sup> day of JUNE, 2006, before me, a Notary Public in and for said County and State, personally appeared STEVE SAND and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

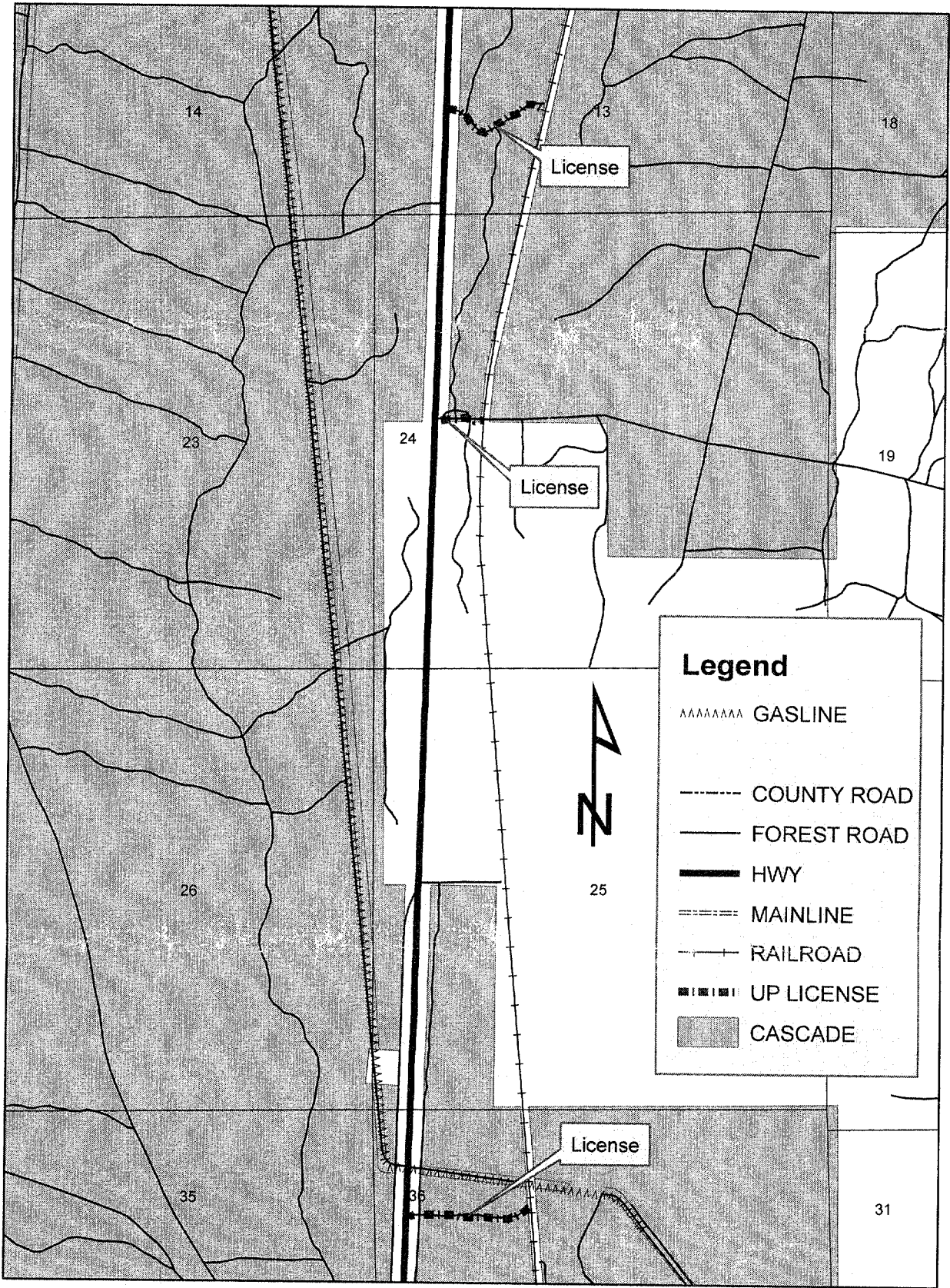
WITNESS my hand and official seal.



Robert L. Hansen  
Notary Public

(Seal)

EXHIBIT "A"



T32S, R07E