

WTC 97890-KK

After recording, return to:

Justin Throne, Esq.  
280 Main Street  
Klamath Falls, OR 97601

2013-006159

Klamath County, Oregon

05/31/2013 02:13:13 PM

Fee: \$57.00

CONSIDERATION:

\$1.00 and other valuable  
consideration

**AGREEMENT**

**(Right of First Refusal, Easements, and Covenants)**

This Agreement is entered into this 3<sup>rd</sup> day of May, 2013, between William Irving Dobbs and Rosemarie T. Dobbs, husband and wife (herein together, "Dobbs"), as the first party and Train Mountain Holdings A, LLC, Train Mountain Holdings B, LLC, Train Mountain Holdings C, LLC, all Oregon limited liability companies, and Train Mountain Institute, an Oregon non-profit corporation, formerly known as Railroad Institute (herein together and collectively, "Institute") as the second party.

**RECITALS**

A. Dobbs own the following property, legally described as follows and hereinafter referred to as the "Dobbs Parcel":

That portion of Government Lot 5 in Section 5, and Government Lot 6 in Section 6, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, lying Easterly of State Highway #62.

B. Train Mountain Holdings A, LLC, owns the following property, legally described as follows and hereinafter referred to as the "Parcel 13":

That portion of Government Lot 1 lying East of State Highway #62 being situated in Section 6, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, and Government Lot 4 also described as the N 1/2 of the NW 1/4 of the NW 1/4 of Section 5, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon.

C. Train Mountain Holdings B, LLC, owns the following property, legally described as follows and hereinafter referred to as the "Parcel 10":

All that portion of the S 1/2 of the N 1/2 of the SE 1/4 of the SE 1/4, AND the S 1/2 of the SE 1/4 of the SE 1/4 lying East of State Highway #62 being situated in Section 31, Township 34 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon.

AGREEMENT

57 PMT

**D.** Train Mountain Holdings C, LLC, owns the following property, legally described as follows and hereinafter referred to as the "Parcel 14":

Government Lots 2, 3, 6, 7, 11, 14, and a portion of Government Lots 12, 13, 19, 20, and 22, lying Easterly of State Highway #62 in Section 5, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon.

**E.** Railroad Institute recently changed its name, by restated Articles of Incorporation, to Train Mountain Institute, which is duly registered as #723321-91 with the Oregon Secretary of State.

**F.** Train Mountain Institute is the sole owner of Train Mountain Holdings A, LLC, Train Mountain Holdings B, LLC, and Train Mountain Holdings C, LLC.

## **AGREEMENT**

In consideration of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is here acknowledged, the parties agree as follows:

\*\*\*\*\*

**1. Right of First Refusal.** Dobbs agrees not to sell, transfer, exchange, grant an option to purchase, lease, or otherwise dispose of the Property or any part of, or interest in, the Property without first offering the Property to Institute on the terms and conditions set forth in this Agreement. As used in this Agreement, the term *sell* includes a ground lease of the Property with primary and renewal terms of more than 10 years in the aggregate.

**1.1** When Dobbs receives from a third party (the "Third-Party Offeror") a bona fide offer to purchase the Property, or a part of it, or an interest in it, that Dobbs desires to accept, Dobbs must give Institute written notice (the "Notice") of the price, terms, and conditions of the offer and deliver a copy of the executed contract evidencing the offer (the "Offer") to Institute.

**1.2** When Institute receives the Notice and a copy of the Offer, Institute will have the prior and preferential right to purchase the Property (or the part of or interest in the Property covered by the Offer, as the case may be) at the same price and on the same terms and conditions as are contained in the Offer, except that if Institute exercises the right of first refusal by electing to purchase the Property then (a) the closing of the transaction contemplated by the Offer will take place no earlier than 90 days after the date that Institute elects to exercise the right of first refusal, and (b) Institute will receive a credit against the sale price of the Property in an amount equal to any brokerage commission that Dobbs may save by selling the Property to Institute rather than the Third-Party Offeror.

**1.3** Institute will have 60 days from the date that Institute receives the Notice and a copy of the Offer to notify Dobbs whether Institute elects to purchase the Property under the

terms of the Offer. If Institute elects to exercise its right to purchase the Property, then, in addition to giving Dobbs written notice of its election within the 60-day period, Institute also must tender an amount equal to the earnest money deposit, if any, specified in the Offer, which will be held and used in accordance with the terms of the Offer.

**1.4** If Institute fails to timely exercise its right to purchase the Property under the terms of this Agreement, then Dobbs will be entitled to sell the Property according to the terms of the Offer to the Third-Party Offeror, subject to the terms set forth below.

**1.5** If Institute fails to timely exercise its right to purchase the Property under the terms of this Agreement, and for any reason Dobbs does not sell or convey the Property to the Third-Party Offeror on the terms contained in the Offer within six months of Institute's election not to purchase, then Dobbs must resubmit the Offer as well as any other offer to Institute before selling the Property, and such offers will be subject to Institute's right of first refusal under this Agreement.

**1.6** If Institute elects to purchase the Property and any element of the consideration specified in the Offer is not cash or deferred purchase money (e.g., an exchange of property or performance of covenants other than the payment of money), then Institute may elect to have the nonmonetary consideration appraised by an independent MAI appraiser and pay Dobbs the cash value of the nonmonetary consideration in lieu of the performance of the nonmonetary obligations specified in the Offer.

**1.7.** The term of this Right of First Refusal commences on the date of this Agreement and terminates on the consummation of a sale of the Property to a third party after Institute has elected not to exercise its right of first refusal.

**1.8** The right of first refusal created by this Agreement does not apply to any sale or conveyance of the Property by Dobbs to any revocable trust for purposed of estate planning.

\*\*\*\*\*

**2. Easements.** All of the easements described below are appurtenant to and run with the land, benefiting and burdening the respective parcels so described, and binding the heirs, successors, and assigns thereto.

**2.1 Utilities.** Institute grants to Dobbs a non-exclusive easement for locating a power line to supply electricity to Dobbs planned residence, burdening Parcel 10 and Parcel 13, and benefiting the Dobbs Parcel. The location of the easement shall be along the western boundary (State Highway #62) of Parcel 10 and Parcel 13. Once the power line enters the Northwest corner of Parcel 10, it shall be buried for the length of the easement, and Dobbs agrees that the power line shall also be buried on the Dobbs Parcel. Institute agrees that if at any time in the future, Parcel 10 or Parcel 13 are developed in a manner that requires permanent use of the electricity from the power line, the owner or owners of those parcels, as the case may be, shall prior to connection pay their pro rata share of the expense of installing the power line, which shall be defined as a one-third share for each parcel. Dobbs agrees that the capacity of the power line shall, to the extent practical, be sufficient to also supply electricity for additional residences that may be developed in the Railroad Ridge area, and hereby grants an easement across the Dobbs Parcel for said purpose. Any pro rata apportionment of the expense made in conjunction with the development of a portion or all of Railroad Ridge shall be determined based on the

actual expense of the total length of the common power line divided by the length of said line through each parcel.

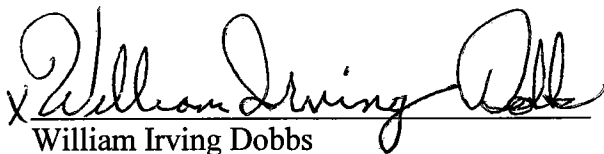
**2.2 Road and Driveway.** Institute grants to Dobbs an easement for a road and driveway for vehicular use to access the Dobbs Parcel from the Prairie Gate via Modoc Road. Dobbs shall relocate Modoc Road so that it does not traverse the Dobbs Parcel; however, the new location must be approved by Institute. Dobbs and Institute shall cooperate to maintain the Prairie Gate in a manner that allows all parties access. Apart from this express easement to access the Dobbs Parcel via Modoc Road, which burdens Parcel 14, Dobbs has no other easement, whether express or implied, for road and driveway purposes on any other land owned by Institute.


\*\*\*\*\*

**3. Covenants.** The parties recognize that the Dobbs Parcel, Parcel 10, and Parcel 13, are all within the historical boundary of "Train Mountain" and shall cooperate so as to maintain and foster practices and appearances as a unified train and railroad park, which include the following covenants:

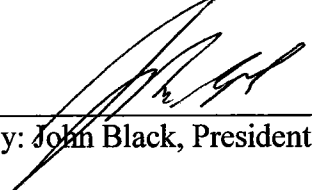
**3.1** All parties to this Agreement mutually covenant that they shall not erect any fence or other linear physical obstruction (including gates) intended to make visible the property lines on the North, East, and South boundaries of Dobbs Parcel, the East and South boundaries of Parcel 13, and the common boundary between Parcel 10 and Parcel 13. Excepted from this covenant is the placement of survey markers at reasonable intervals so that each owner can determine the precise location of the property lines for that owner's parcel.

**3.2** The parties agree that the Dobbs Parcel, Parcel 10, and Parcel 13 may have residential dwellings and any related structures, and that in addition to this use, the parties covenant that any development of said parcels will be to create and enjoy a 7.5" gauge scale railroad with the scenery, model buildings, and features that create a "Miniature World" for the railroad tracks to run through.

  
William Irving Dobbs

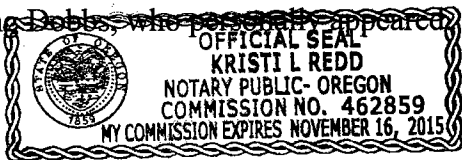
  
Rosemarie T. Dobbs


TRAIN MOUNTAIN INSTITUTE  
(fka RAILROAD INSTITUTE), TRAIN  
MOUNTAIN HOLDINGS A, LLC, TRAIN  
MOUNTAIN HOLDINGS B, LLC, TRAIN  
MOUNTAIN HOLDING C, LLC:

X   
By: John Black, President and Manager

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

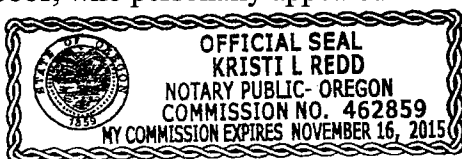
SUBSCRIBED AND ACKNOWLEDGED before me this 31<sup>st</sup> day of May, 2013, by William  
Irving Dobbs, who personally appeared.

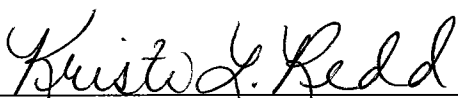


  
Notary Public for Oregon  
My commission expires: 11/16/2015

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

SUBSCRIBED AND ACKNOWLEDGED before me this 31<sup>st</sup> day of May, 2013, by Rosemarie  
T. Dobbs, who personally appeared.




  
Notary Public for Oregon  
My commission expires: 11/16/2015

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

SUBSCRIBED AND ACKNOWLEDGED before me this 31<sup>st</sup> day of May, 2013, by John C.  
Black, who personally appeared.



  
Notary Public for Oregon  
My commission expires: 11/16/2015