

2018-001576

Klamath County, Oregon

02/08/2018 03:43:01 PM

Fee: \$92.00

Recordation requested by and
after recordation return to:

Eugene A. Frassetto
Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205

Dated: October __, 2017

UNDERGROUND FIBER-OPTIC LINE EASEMENT

BETWEEN:

INTERFOR U.S. INC.

“GRANTOR”

a Washington corporation
(formerly known as and which may
have taken title as INTERFOR PACIFIC INC.)
700 Westpark Drive, Suite 100
Peachtree City, GA, US 30269
Attention: General Counsel & Corporate Secretary

AND

TDS BROADBAND SERVICE LLC d/b/a BendBroadband

“GRANTEE”

a Delaware limited liability company
525 Junction Road
Madison, WI 53717
Attention: Right of Way

Grantor owns the real property in Gilchrist, Klamath County, Oregon, more particularly described on attached Exhibit A (the “**Property**”). Grantee has requested that Grantor grant Grantee an easement for the installation and use of a single, buried fiberoptic line under and across the portion of the Property described below as the Easement Area. Grantor has agreed to do so on the terms and conditions set forth in this Underground Fiber-Optic Line Easement (“**Agreement**”).

In consideration of the payment by Grantee to Grantor of the sum of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) and the mutual covenants contained herein and other good and valuable consideration, the parties hereby agree as follows:

1. Grant of Easement. Grantor hereby grants Grantee a perpetual, nonexclusive, easement under and across (1) that 10-foot wide strip of land described in Exhibit A of that certain Easement Agreement (the “**BCC Easement**”) recorded in the records of Klamath County, Oregon at 2013-007223; (2) that 20-foot wide strip of land, described in (2) on attached Exhibit B; and (3) MEC’s pole line from approximately 43.478956, -121.698411 to approximately 43.467061, -121.698561, described in (3) on attached Exhibit B (together, the “**Easement Area**”), subject to all matters of record and other existing uses and rights of third parties, for the purposes of installing a single, underground fiber-optic line (“**Line**”) and for the future inspection, maintenance and repair of the Line (the “**Work**”) and for no other purpose whatsoever, subject

to the terms and conditions of this Agreement. All Work relating to the original installation of the Line shall be completed between the dates of October 26, 2017 to December 31, 2017. Grantee shall cause the Line to be buried not less than 36 inches below the existing grade of the Easement Area.

2. Coordination of Entry/AS BUILT Survey. The access and use rights given pursuant to this Agreement are given on the following conditions and Grantee hereby covenants and agrees:
 - (a) that Grantee and its employees, contractors, subcontractors, suppliers, consultants, agents and invitees and any others acting or purporting to act through or under Grantee ("**Grantee Permittee(s)**") wishing to conduct any Work on the Easement Area, or to access the Easement Area, that involves visual inspection only and does not involve any construction, demolition, alteration, excavation or other surface or subsurface disturbance, must provide Grantor with the proof of insurance required under Section 6, below, and call the Mill Manager, at Grantor's Gilchrist mill at 541.433.2222 (or such other contact designated by Grantor by notice to Grantee), and obtain clearance for the particular Grantee Permittee(s) and the work or entry proposed prior to conducting such work or accessing or entering the Easement Area or Property; provided that Grantor may require written request and written approval. For any proposed Work or entry by any Grantee Permittee(s) that includes any construction, demolition, excavation or other surface or subsurface disturbance, except in an emergency (when reasonable notice in the circumstances is required, including telephonic notification at the contact number(s) provided above), Grantee shall provide Grantor with the proof of insurance required under Section 6, below, and give Grantor at least 15 days' advance written notice of and coordinate with and obtain written clearance from Grantor with respect to the activity proposed and the Grantee Permittee(s) involved before undertaking such activity. Where notice is required hereunder, such shall be in writing and delivered to the respective party at its address set forth herein or such other address as it shall direct by written notice to the other;
 - (b) that Grantee shall obtain prior to any entry by Grantee or any Grantee Permittee(s), and maintain in effect at all times, the express permission of all other persons whose permission may be required (including, without limitation, MidState Electric Cooperative, Inc., any third-party holder of the BCC Easement, and any other holders of any prior easement or other use rights) to the proposed entry onto or use of the Easement Area, the construction, use or maintenance of the Line or other Work; and
 - (c) that Grantee will at Grantee's sole cost and expense:
 - (i) within 90 days after completion of the original installation of the Line, cause an AS BUILT survey plan of the Easement Area to be made and certified to both Grantor and Grantee showing the AS BUILT location of the Line in the Easement Area and the Easement Area ("**Survey**"); and
 - (ii) promptly following Grantor's written approval of the Survey, the parties shall execute and record a supplement to this Agreement to replace the original Exhibit B description of the Easement Area attached hereto with the description of the Easement Area given in the approved Survey and, if recordable, the Survey, with Klamath County at Grantee's expense.
3. Acceptance of Risk/Release of Grantor. Grantee hereby accepts and fully assumes all risks, dangers and hazards associated with access to and use of the Easement Area by Grantee and its Grantee Permittee(s) and, to the fullest extent not prohibited by applicable law, hereby releases the Grantor and its affiliates, partners, members, shareholders, directors, officers, employees and agents and their respective directors, officers, shareholders, employees, agents, and successors and assigns (collectively the "**Releasees**") from any actions, claims obligations, causes of action, demands, costs, expenses and compensation of any kind relating to, or resulting from the presence or condition of the Line, access to and use of the Property and Easement Area by, and any acts or omissions of, Grantee and/or any Grantee Permittee(s).

4. Termination of BCC Easement. To the extent Grantee now holds or hereafter acquires the grantee's interest, or any other right, title or interest, in or to or under the BCC Easement, Grantee hereby releases, conveys to Grantor and terminates such interest(s) in, to and/or under the BCC Easement as of the date of this Agreement (for present interests) or later date that Grantee acquires such interest (for after-acquired interests). Such termination and release by Grantee shall be automatic and self-executing; provided that, without limiting the automatic and self-executing nature of such termination, Grantee shall execute and provide Grantor with such other and further recordable instrument(s) confirming such termination in form and content approved in writing by Grantor on request by Grantor. By not later than ninety (90) days after the date of this Agreement, Grantee shall obtain and record either (i) a fully executed and recordable instrument terminating all right, title and/or interest of Bend Cable Communications, LLC (now known as BCC, LLC ("BCC")) in, to and under the BCC Easement from BCC, or (ii) a fully executed and recordable assignment of the BCC Easement from BCC to Grantee, in each case with the documentation satisfactory to and in form and content approved in writing by Grantor.
5. Compliance with Law/Third-Party Rights, Approvals and Permits, Indemnification, Conduct of Work. Grantee represents, warrants and covenants and agrees to and for the benefit of Grantor that Grantee will keep Grantor apprised from time to time of Grantee's and Grantee Permittee(s)' activities on the Easement Area and Property and covenants and agrees with the Grantor that Grantee and all Grantee Permittee(s) will, at Grantee's sole cost, risk and expense, at all times (including with respect to any use or entry by or for Grantee onto the Easement Area prior to the date of this Agreement):
- (a) comply with all statutes, laws, bylaws, rules, requirements, orders, directions, ordinances, regulations and standards of general application now or hereafter imposed by any competent statutory authority and applicable to the Property (including without limitation all Environmental Laws and laws regulating workers' compensation) and, for the purposes of this Agreement:

"Environmental Laws" means any and all statutes, laws, regulations, rules, policies, orders, bylaws, standards, guidelines, permits, and other lawful requirements of any governmental authority having jurisdiction over the Property, now or hereafter in force, relating in any way to the environment or human health and safety and applicable to the Property, or the use or occupancy of the Property or the handling or release of any Hazardous Substance in, on, to or from the Property or any other property, including the principles of common law and equity; and "Hazardous Substance" means any substance, product, good or other material which is:
(i) hazardous, toxic or dangerous, or potentially hazardous, toxic or dangerous, to human health or to the environment; or (ii) defined in any Environmental Law as a hazardous product, hazardous substance, toxic substance, deleterious substance, waste, special waste, dangerous good or reportable substance, or similar term; or (iii) now or hereafter prohibited, controlled or regulated under any Environmental Laws;
 - (b) obtain and maintain any and all necessary private and governmental permits, consents and approvals required in connection with Grantee's exercise of its rights under this Agreement, Grantee's activities, the existence of this Agreement and/or the Line;
 - (c) exercise its rights and carry out its duties and obligations hereunder in a reasonable manner and without infringing the rights or damaging the property of any third parties;
 - (d) except for the temporary disturbance of the surface of the Easement Area required to install the Line, not damage the Property or improvements thereon and, if any such damage should occur, to repair, restore and/or replace the damaged property at Grantee's sole cost and expense to as close to its pre-damaged condition as is reasonably practical with reasonable dispatch or, where Grantor reasonably deems restoration to be impractical and so notifies Grantee, reimburse Grantor for all damage not repaired, restored or replaced to Grantor's satisfaction;
 - (e) except as relating to Grantee's use of the easement permitted herein, not obstruct or interfere with Grantor's use or enjoyment of or access to the Property or Easement Area;

- (f) not suffer or permit any construction, contractor, builders' lien or other lien or claim of any such lien to be filed against the Property or Easement Area by reason of any work, labor, services or material supplied or claimed to have been supplied to or for Grantee or any Grantee Permittee(s), and, if any such lien or claim is at any time filed against the Property, Grantee will cause a discharge and release of the Property from the lien or claim to be filed and recorded within 14 days after the filing of the lien or claim;
- (g) defend, indemnify, reimburse and save harmless Grantor and the Releasees and their respective successors and assigns, for, from and against any and all actions, causes of actions, claims, suits, proceedings, losses, costs and expenses (including without limitation, attorney fees) of whatever kind, for any loss, damage, injury or death to any person or persons or any public or private property arising out of the act or omission of Grantee or any Grantee Permittee(s), the use or existence of the Line or use of the Property or any portion thereof by Grantee and/or any Grantee Permittee(s); and
- (h) promptly repair any damage or disturbance to the surface (including paving or other improvements) or subsurface (including any improvements in place at the time Grantee commences such work), if any, caused by or arising out of Grantee's or any Grantee Permittee(s)' acts or omissions or the presence of the Line, in order to leave the Easement Area and Property and any and all improvements thereon or therein in at least as good condition as existed prior to such construction or other work, reasonable wear and tear excepted.

6. Insurance /AS IS/ Attorney Fees. Grantee covenants and agrees that:

- (a) before any entry onto the Property under this Agreement, Grantee will obtain and maintain, and cause its Grantee Permittee(s) entering onto the Property to obtain and maintain, at its or their sole expense, workers' compensation insurance with limits as required by applicable law and commercial general liability insurance and non-owned automobile liability insurance covering bodily injury, death, damage to property and loss of use thereof having a minimum limit of \$3,000,000 inclusive per occurrence;
- (b) the insurance policy/ies will name the Grantor and the Releasees as additional insured, contain a waiver of subrogation rights of the insurer for any claims it might otherwise have against the Grantor and any Releasees, and provide insurance coverage that is primary and not in excess over any other insurance or self-insurance carried by the Grantor or any Releasees, and be in an occurrence and not claims made form;
- (c) Grantee will maintain such insurance at all times this Agreement is in effect;
- (d) before any entry onto the Property under this Agreement, Grantee and each Grantee Permittee will provide the Grantor duplicate policy(ies) (with all attachments) or at Grantor's election certificates or other evidence satisfactory to the Grantor, acting reasonably, of such insurance and confirmation from the insurer that the insurance will not be cancelled or reduced without first giving not less than thirty (30) days advance notice to the Grantor of cancellation or reduction;
- (e) Grantor may reevaluate the minimum limits required on the foregoing policies and may, acting reasonably, adjust those limits to reflect industry standards and risks. Grantor shall provide written notification to Grantee and Grantee shall cause the coverage to be so adjusted and provide proof of adjustment to Grantor within thirty (30) days after such notification;
- (f) none of the insurance provisions in this Agreement or the insurance policy/ies to be obtained and maintained pursuant hereto, and no consent or approval by Grantor, will in any way reduce, limit or change Grantee's indemnity or other obligations or liability under this Agreement; and
- (g) in any action or suit to enforce any term or provision of this Agreement or to recover damages or obtain equitable relief in connection with any breach or default by any other party of any term or

provision of this Agreement, then the party substantially prevailing in such matter shall be entitled to recover from the other party the substantially prevailing party's reasonable outside attorneys' fees and costs incurred in connection with such action or suit, in any review or appeal of such matter and in any other proceedings, including without limitation, any arbitration (without implying any unilateral right of any party to require arbitration) or bankruptcy case or proceedings, petitions or motions in bankruptcy, in addition to any other relief to which it may be entitled, including the fees and costs incurred in enforcing any judgment or decree which may be obtained.

7. Relocation of Easement Area. Grantee shall, on written request by Grantor, relocate the Line in whole or in part to a different location on the Property designated by Grantor, provided Grantor shall provide a reasonable location for the Line, and comply with applicable law and prudent industry practice ("**Relocated Easement**"). In such event, Grantee shall reasonably cooperate with Grantor to effect such relocation. Grantor shall reimburse Grantee for actual and reasonable, documented out-of-pocket expenses incurred by Grantee for the relocation of the Line at Grantor's request. As used above, "**prudent industry practice**" means any of the practices, methods and acts accepted, engaged in or approved by a significant portion of installers and users of fiber-optic cable during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with a reasonable cost, good business practices, reliability, safety and expedition. "Prudent industry practice" is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region in which the Grantor's Property is located. If Grantor exercises such right of relocation, Grantor shall provide Grantee a written notice setting forth the description of the Relocated Easement area ("**Relocated Easement Description**"). Grantor shall record in the records of the County in which this Agreement is recorded a supplement to this Agreement, referring to this Agreement in reasonable detail and setting forth the Relocated Easement Description. Upon such notice to Grantee and the recording by Grantor of such supplement, the Relocated Easement Description automatically shall replace and supersede the prior description of the Easement Area, and to the extent not included within the Relocated Easement Description so recorded, the Grantee shall have no further right or interest in or to the prior Easement Area; provided that Grantee shall continue to have a temporary easement over the Prior Easement Area for the existing Line then installed by Grantee in the prior Easement Area for the period through the earlier to occur of (A) (i) installation of a new Line in the Relocated Easement Area, (ii) such line becoming operational and (iii) and removal of Grantee's existing Line from the Property outside of the Relocated Easement Area, and (B) if, by written agreement of the parties, such work is undertaken by or through Grantee, by the date agreed to by the parties in connection with Grantee undertaking such work, at which time said temporary easement shall automatically terminate, expire and be extinguished. Notwithstanding and without diminishing the unilateral and self-executing nature of the foregoing right of Grantor to relocate the Easement Area from time to time, Grantee, upon demand from and without cost to Grantor shall execute, acknowledge and deliver to Grantor such instrument(s) as Grantor shall reasonably require to evidence the relocation of the Easement Area as provided above.
8. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.
9. Entire Agreement/Counterparts. This Agreement supersedes and replaces all written and oral agreements previously made or existing between the parties with respect to the placement of fiber-optic cable in or about the Easement Area and the termination of all of Grantee's present and future right, title and interest, if any, in, to and/or under the BCC Easement. Grantee hereby confirms and agrees that Grantee does not have any right, title or interest in or to or to the use of the Property except the easements and Easement Areas as expressly provided in this Agreement. This Agreement may be executed in two or more counterparts, all of which together shall constitute one and the same agreement.

NO MORE TEXT THIS PAGE - SIGNATURES NEXT PAGE(S)

IN WITNESS WHEREOF, the parties have executed this Underground Fiber-Optic Line Easement.

GRANTOR:

INTERFOR U.S. INC.

By: 

Authorized Signatory

By: 

Authorized Signatory

GRANTEE:

TDS BROADBAND SERVICE LLC

By: 

Authorized Signatory

By: _____

Authorized Signatory

IN WITNESS WHEREOF, the parties have executed this Underground Fiber-Optic Line Easement.

GRANTOR:

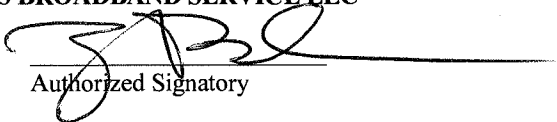
INTERFOR U.S. INC.

By: _____
Authorized Signatory

By: _____
Authorized Signatory

GRANTEE:

TDS BROADBAND SERVICE LLC

By: _____
Authorized Signatory

By: _____
Authorized Signatory

PROVINCE OF BRITISH COLUMBIA)

) SS.

CITY OF VANCOUVER)

On this 20th day of December, 2017, before me, Xenia Kriticos, Notary Public in and for the Province of British Columbia, residing at Vancouver, BC, Canada, personally appeared before me John Horning & Richard Pozzan personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument, for and on behalf of INTERFOR U.S. INC., a Washington corporation, as its free and voluntary act and for the uses and purposes set forth in the instrument.

WITNESS my hand and official seal.

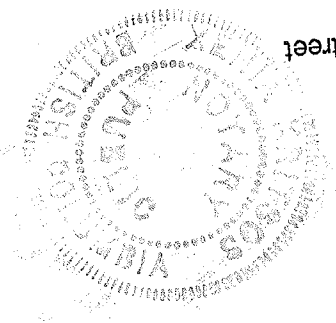
Signature: Xenia Kriticos

Notary Public in and for the Province of British Columbia

Printed name: Xenia Kriticos

My commission expires: Does not expire

XENIA KRITSOS
Barrister & Solicitor
Suite 3500, 1055 Dunsmuir Street
Vancouver, BC V7X 1H7



STATE OF OREGON)
)ss.
COUNTY OF Deschutes)

This instrument was acknowledged before me on November 14th, 2017, by
Larry Boehm, Vice President of
TDS BROADBAND SERVICE LLC, a Delaware limited liability company, on its behalf.

Rhonda L. Cox
Notary Public - State of Oregon

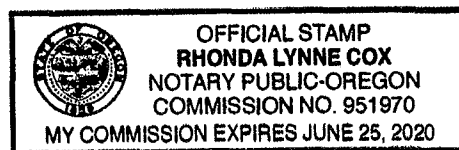


EXHIBIT A

THE PROPERTY

Parcel 1 of Major Land Partition 66-91, situated in Sections 19 and 30, Township 24 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being further described as follows:

Beginning at a 1½ inch aluminum cap stamped "Oman OR 702" set as part of Klamath County Survey No. 2135 marking the center-west one-sixteenth corner of said Section 30; thence North 89°59'25" West, 129.61 feet to a 5/8 inch iron rod with yellow plastic cap stamped "W&H Pacific"; thence North 00°43'48" East 581.98 feet; thence North 00°57'00" East 659.67 feet; thence North 08°53'31" East, 173.46 feet; thence North 22°47'34" East, 125.21 feet; thence North 31°09'33" East, 170.48 feet; thence North 42°06'47" East, 126.95 feet; thence North 54°08'16" East, 335.07 feet; thence North 48°40'02" East, 137.86 feet; thence North 31°02'30" East, 120.80 feet; thence North 16°51'52" East, 315.06 feet; thence North 08°33'43" East, 156.39 feet; thence North 29°47'20" West, 90.21 feet; thence North 04°26'16" West, 256.63 feet; thence North 29°31'40" West, 637.26 feet; thence North 68°17'15" West, 1448.58 feet; thence North 15°15'50" East, 537.11 feet; thence South 67°44'01" East, 1104.72 feet; thence North 07°59'49" West, 1010.20 feet; thence North 12°06'48" West, 1596.12 feet; thence North 69°05'03" East, 88.90 feet; thence South 35°31'34" East, 66.26 feet; thence South 43°11'08" East, 131.62 feet; thence South 47°07'55" East, 622.90 feet; thence South 48°21'34" East, 691.87 feet; thence South 81°01'10" East, 47.07 feet; thence North 65°28'44" East, 110.88 feet; thence South 89°01'46" East, 106.04 feet; thence South 72°05'48" East, 657.54 feet; thence South 63°19'12" East, 80.79 feet; thence South 38°30'07" East, 111.93 feet; thence South 24°05'42" East, 481.01 feet; thence South 26°01'19" East, 194.21 feet; thence South 20°56'51" East, 148.78 feet; thence South 15°58'19" East, 262.21 feet; thence South 74°22'21" East, 66.62 feet to an angle point on the Westerly line of Parcel 1, as defined by Partition Plat No. MP 53-91 previous to recording with Klamath County Records; thence along said Westerly line of said Parcel 1 the following courses: thence North 81°33'08" East, 333.88 feet; thence South 15°00'41" West, 678.21 feet; thence North 74°59'19" West 618.42 feet; thence South 01°04'00" East, 1296.70 feet; thence North 89°56'12" East, 216.77 feet; thence South 15°00'41" West, 80.47 feet; thence South 74°59'19" East, 30.00 feet; thence South 15°00'41" West, 1335.95 feet to a point of spiral curvature; thence along the arc of a 02° railroad spiral curve offset 50 feet from the centerline of said railroad curve, the long chord of which bears South 15°02'54" West, 41.47 feet to a point on the South line of said Parcel 1; thence leaving said Westerly and Southerly lines of Parcel 1 along the arc of a 02° railroad spiral curve offset 50 feet from the centerline of said railroad curve, the long chord of which bears South 15°42'07" West, 116.98 feet to a point of spiral to curvature; thence along the arc of a 2814.79 foot radius railroad curve to the right, through a central angle of 24°00'37", the long chord of which bears South 27°09'13" West, 1017.53 feet to a point of curvature to spiral, said point being 50 feet Westerly of the centerline of said railroad curve; thence along the arc of a 02° railroad spiral curve offset 50 feet from centerline of said railroad curve, the long chord of which bears South 38°24'35" West, 158.49 feet; thence South 39°01'18" West, 130.72 feet; thence North 50°58'42" West, 23.93 feet; thence South 39°00'19" West, 0.90 feet to a point on the East-West centerline of Section 30 as defined by Klamath County Survey No. 2135; thence along said centerline of Section 30 as defined by said Survey No. 2135, North 89°59'30" West, 1062.09 feet to the point of beginning.

TOGETHER WITH an Access Easement Agreement recorded October 4, 1991 in Volume M91, page 20336, Microfilm Records of Klamath County, Oregon.

EXHIBIT B

EASEMENT AREA

The Easement Area shall be substantially as follows:

- (1) that 10-foot wide strip of land described in Exhibit A of that certain Easement Agreement (the "**BCC Easement**") recorded in the records of Klamath County, Oregon at 2013-007223;
- (2) A strip of land in Klamath County, Oregon, lying within that easement described in Transmission Line Easement dated September 10, 1952, from Gilchrist Timber Company to Midstate Electric Cooperative, Inc. ("**MEC**"), as modified by that certain Correction Easement dated November 24, 2014, and recorded at Doc. 2014-012587 in the Klamath County records (as modified, the "**MEC Easement**"), said strip being twenty (20) feet in width, ten (10) feet on either side of a centerline located between MEC Pole 74713 at the northern end and MEC Pole 74729 at the southern end, running approximately five (5) feet to the west of the existing MEC pole line located in the above described MEC Easement; and
- (3) MEC's pole line from approximately 43.478956, -121.698411 to approximately 43.467061, -121.698561.

(To be supplemented with AS BUILT Survey once approved by Grantor as provided in the Agreement.

”