

2024-006409

Klamath County, Oregon



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07/23/2024 09:23:32 AM

Fee: \$192.00

After recording, return to:

Melvin D. Ferguson  
Attorney at Law  
514 Walnut Ave.  
Klamath Falls, OR 97601

## NOVATION TRACKAGE EASEMENTS

THIS NOVATION AGREEMENT FOR TRACKAGE EASEMENTS is made this 1<sup>st</sup> day of May, 2023 by and between Timberlake Railroad, LLC, an Oregon Limited Liability Company (hereinafter "Timberlake"); John F. Vertel and Ann M. Vertel, Trustees of the John and Ann Vertel Family Trust under agreement dated September 24, 1996 (hereinafter "Vertel Trust"); Fox Landing, LLC, an Oregon Limited Liability Company (hereinafter "Fox Landing"); and 36869 Highway 62 Ltd., a British Columbia Limited Company (hereinafter "Hope").

### RECITALS

A. Timberlake owns the following parcels of property located in Klamath County, Oregon which shall be referred to herein separately as "Timberlake West Parcel" and Timberlake East Parcels":

#### Timberlake West Parcel:

A parcel of land situated in the Northwest corner of Government Lot 26, in Section 5, Township 35 South, Range 7 East of the Willamette Meridian, more particularly described as follows:

BEGINNING at the Northwest corner of said Government Lot 26; thence East 834.8 feet; thence South, parallel to the West line of said lot 208.7 feet; thence West parallel to the North line of said lot 834.8 feet, to a point on the West line of said lot; thence North on said West line 208.7 feet, to the point of beginning.

#### Timberlake East Parcels:

Government Lots 33 and 34, Section 4, Township 35 South, Range 7 East of the Willamette Meridian; and

A tract of land situated in Government Lots 3 and 4, Section 9, Township 35 South, Range 7 East of the Willamette Meridian, being more particularly described as follows: Beginning at the intersection of the North line of said Lot 3 and the Northerly line of

Highway 422; thence North 89° 05'23" West, 48.76 feet to the Northwest corner of said Lot 3; thence North 89° 02'23" West on the North line of said Lot 4, 497.50 feet; thence South 09° 24'00" East, 317.74 feet to the Northerly line of Highway 422; thence Northeasterly on said Northerly line, 584.70 feet, more or less, to the point of beginning.

B. Vertel Trust owns a parcel of property located in Klamath County, Oregon described as follows:

A parcel of land situated in Government Lot 26, in Section 5, Township 35 South, Range 7 East of the Willamette Meridian, excepting the Northwest corner, more particularly described as follows:

BEGINNING at the Northwest corner of said Government Lot 26; thence East 834.8 feet; thence South, parallel to the West line of said lot 208.7 feet; thence West parallel to the North line of said lot 834.8 feet, to a point on the West line of said lot; thence North on said West line 208.7 feet, to the point of beginning ("Vertel Trust Parcel").

C. Fox Landing owns a parcel of property located in Klamath County, Oregon described as follows:

A parcel of land situated in Government Lot 25, Section 5, Township 35 South, Range 7 east of the Willamette Meridian, Klamath County, Oregon, and more particularly described as follows:

Commencing at the Southwest corner of said Lot 25; proceeding Northerly 250 feet, thence Easterly 660 feet, thence Southerly 250 feet, thence Westerly 660 feet to the point of beginning ("Fox Landing Parcel")

D. Hope owns a parcel of property located in Klamath County, Oregon described as follows:

Lot 32 in Section 5, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon ("Hope Parcel").

E. All of the properties described above adjoin each other and together are referred to hereafter as "burdened parcels" owned by "burdened parties". "Burdened parties" where appropriate in this agreement shall reciprocally be referred to as "benefitted parties".

F. On or about June 19, 2007 Timberlake; Jerry G. Balf and Louise M. Balf, Trustees of the Balf Family Trust dated May 21, 1997 (hereinafter "Balf"); and a former principal of 36869 Highway 62 Ltd, a British Columbia Limited Company (hereinafter "Vanderspek") entered into a Trackage Easement Agreement. Said agreement is attached hereto as Exhibit 1 which by reference is incorporated herein. The Trackage Easement with the named parties in this

Recital F was recorded at Volume 2007, Page 011095 on June 20, 2007 in Klamath County, Oregon property records.

G. Subsequent to the recording of the Trackage Easement referenced as Exhibit 1, Balf transferred its property to Fox Landing, and Margaret Hope became the Owner/Managing Director of 36869 Highway 62 Ltd. in lieu of Vanderspek. In addition, the first described parcel under the title Timberlake West Parcels of Exhibit 1 was transferred to the Vertel Trust.

H. Thomas O. Vertel is the sole Member of Timberlake Railroad, LLC (Timberlake). John F. Vertel and Gerrin DeGroot were appointed as Conservators of Thomas O. Vertel pursuant to Klamath County Circuit Court Case No. 18PR00771. John F. Vertel is the elected Manager of Timberlake acting on behalf of Timberlake.

I. "Train Mountain" refers to Train Mountain Institute, which is an Oregon nonprofit public benefit corporation which has on its property adjacent to the parties properties miniature railroad tracks to which the parties hereto can connect.

J. The parties herein desire to enter into revised trackage easements to replace in its entirety the Trackage Easement Agreement attached as Exhibit 1. The new trackage easements will reduce the burden on property owned by Timberlake.

WHEREFORE the parties agree as follows:

#### AGREEMENT

1. Grant of Easement. All of the parties grant to each other a limited easement for trackage, which is defined as the occupancy and use of any burdened parcel for access for ingress, transit, and egress upon the burdened parcel, more specifically diagramed on Exhibit 2, which is attached hereto and incorporated by reference, to operate 7-1/2" gauge miniature railroad equipment and to walk along the track or an area five feet (5') on either side of the centerline of said track for a total of ten feet (10') of width for a single track line and fourteen feet (14') of width for a double track line.

2. Definition of "Trackage". For purpose of this agreement, the term "trackage" is defined to include everything constructed and resting upon, or immediately adjacent to and thereby a part of, the respective easements, and consists of, but is not limited to, plastic underlayment, track panels, switches, crossovers, road crossings, switching systems, signal systems, supplied electrical power, supplied potable water systems, signage, ballast, culverts, trestles, turntables, loading and unloading facilities, fueling facilities, bridges and tunnels that exist within the land.

3. Use of Easement/Risk. The benefited parties agree to use the easements created by this agreement at their own risk, and further covenant to indemnify and hold harmless the

burdened parties for and against any and all liability, arising from injury to person or property, occasioned wholly or in part by any act or omission of the benefited party, or its "participants," which term is defined to include, but is not limited to, members, guests, invitees, licensees, permittees, owners, operators, riders, volunteers, observers, and agents.

4. Liability Insurance. The benefited parties agree to maintain, at all times during use of the easements, a suitable policy of general liability coverage, in an amount not less than five hundred thousand dollars (\$500,000), and if available, naming the burdened parties as additional insured parties, and to also provide evidence and a copy of said policies to all the parties.

5. Specific Easements. The following easements shall be permanent and perpetual and shall be appurtenant to and run with the land (in the case of Timberlake, to and with the Timberlake East Parcel), binding heirs, successors, and assigns:

a. Fox Landing grants to Timberlake, Vertel Trust and Hope, a non-exclusive trackage easement over the Fox Landing Parcel to connect and use the trackage approaching the Northwest corner of the Hope Parcel to trackage approaching the Southeast corner of Vertel Trust Parcel; however, said easement shall not include any private trackage owned by Fox Landing and Fox Landing shall determine the exact route.

b. Hope grants to Timberlake, Vertel Trust and Fox Landing, a non-exclusive trackage easement over the trackage existing and installed at the date of this agreement on the Hope Parcel, excepting private trackage, and a non-exclusive trackage easement to connect from the switch immediately west of the "Field Siding" to Fox Landing's trackage approaching the Northwest corner of the Hope Parcel.

c. Timberlake grants to Hope, Fox Landing and Vertel Trust a non-exclusive easement to use constructed trackage beginning near the Northeast corner of Hope's Parcel where trackage enters Timberlake East Parcel, crossing Hidden Valley Road on the existing grade crossing, continuing over existing switch and track, continuing north far enough to switch to an existing track that proceeds north in approximately a ten foot (10') wide corridor approximately thirty feet (30') to forty feet (40') from, and running parallel to, the Western boundary of Timberlake East Parcel until the trackage reaches "Train Mountain" property, all as shown in Exhibit 2, which is attached hereto and incorporated herein by reference.

6. Trackage Construction Standards. All trackage connections must be built according to "Train Mountain" track standards, then in place, and such new trackage that is built and constructed, and upon completion of construction, shall become the property of the parcel owner upon which the track sits. Train Mountain track standards are attached hereto as Exhibit 3, which by reference are incorporated herein.

7. Fence Restrictions. The parties agree and covenant that they shall not maintain or erect fences that would block or stymie the free flow of model train traffic across the easements.

8. Trackage Maintenance Repair. The parties shall equitably apportion any maintenance and repair expenses associated with the easements created by this agreement.

9. Novation. This Trackage Easement Agreement supercedes and extinguishes that Trackage Easement attached as Exhibit 1 dated June 19, 2007 and recorded at Volume 2007, Page 011095 of Klamath County, Oregon property records. This agreement becomes binding upon its execution by the parties. The parties hereto acknowledge this replacement trackage easement agreement reduces the burden on the Timberlake West Parcel.

10. Consideration. The consideration for this Novation Agreement for Trackage Easements is the release and acceptance of benefits and the release and acceptance of burdens and obligations by the parties hereto, each to the other.

11. Other Exhibit. Exhibit 2 referenced above is not a to scale diagram.

12. Indemnity. Each party shall defend, save, hold harmless and indemnify the other party and the other party's agents, officers, directors, employees heirs and permitted assigns against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever ("claims"), including attorney fees, resulting from, arising out of, or relating to the acts or omissions of the indemnifying party's, agents, officers, directors, employees, heirs and assigns.

13. Miscellaneous Provisions.

A. Binding Effect. This Agreement is binding on and inures to the benefit of the parties and their respective heirs, personal representatives, successors, and permitted assigns.

B. Assignment. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned by any party without the prior written consent of the other parties.

C. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or may be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.

D. Notices. All notices and other communications under this Agreement must be in writing and will be deemed to have been given if delivered personally, sent, by mail, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery

service (with confirmation) to the parties at the following addresses or facsimile numbers (or at such other address or facsimile number a party may designate by like notice to the other parties):

Timberlake Railroad, LLC  
c/o John F. Vertel, Conservator  
PO Box 737  
Chiloquin, OR 97624  
Fax: \_\_\_\_\_  
Email: [jvertel@cenntian.com](mailto:jvertel@cenntian.com)

John and Ann Vertel, Trustees of the  
John and Ann Vertel Family Trust  
PO Box 737  
Chiloquin, OR 97624  
Fax: \_\_\_\_\_  
Email: [jvertel@cenntian.com](mailto:jvertel@cenntian.com)

Fox Landing, LLC  
PO Box 263  
Chiloquin, OR 97624  
Fax: \_\_\_\_\_

Email: [unhbrunwelche@gmail.com](mailto:unhbrunwelche@gmail.com), [aladybug@sonic.net](mailto:aladybug@sonic.net), ~~[dragonslandanet@gmail.com](mailto:dragonslandanet@gmail.com)~~  
[richbruner9@gmail.com](mailto:richbruner9@gmail.com)

36869 Highway 62 Ltd.  
4649 Hastings St.  
Burnaby BC V5C2K6  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Any notice or other communication will be deemed to be given (a) on the date of personal delivery, (b) at the expiration of the 3rd day after the date of deposit in the United States mail, (c) upon confirmation of email delivery, or (d) on the date of confirmed delivery by facsimile or overnight delivery service.

E. Amendments. This Agreement may be amended only by an instrument in writing executed by all the parties, which writing must refer to this Agreement.

F. Construction. The captions used in this Agreement are provided for convenience only and will not affect the meaning or interpretation of any provision of this Agreement. All references in this Agreement to "Section" or "Sections" without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Whenever the words "include" or

“including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.”

G. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

H. Facsimile Signatures. Facsimile transmission or other electronic transmission of any signed original document, and retransmission of any signed electronic or facsimile transmission, will be the same as delivery of an original. At the request of any party, the parties will confirm electronic and/or facsimile transmitted signatures by signing an original document.

I. Further Assurances. Each party agrees to execute and deliver such other documents and to do and perform such other acts and things as any other party may reasonably request to carry out the intent and accomplish the purposes of this Agreement.

J. Time of Essence. Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.

K. Expenses. Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its own expenses in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement.

L. Waiver. Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

M. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.

N. Attorney Fees. In the event suit or action is instituted to enforce any of the terms of this contract, each party shall be responsible for its own attorney fees, costs and related expenses.

O. Injunctive and Other Equitable Relief. The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that in addition to damages, the other parties will be entitled to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

P. Venue. Any action or proceeding seeking to enforce any provision of this Agreement or based on any right arising out of this Agreement must be brought against any of

the parties in Klamath County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.

Q. Exhibits. The exhibits referenced in this Agreement are part of this Agreement as if fully set forth in this Agreement.

R. Severability. If any provision of this Agreement is deemed to be invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be impaired in any way.

S. Entire Agreement. This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

T. Recording. The parties agree this agreement shall be recorded in the real property records of Klamath County, Oregon.

U. Acknowledgment. The parties hereto acknowledge this agreement has been drafted by Melvin D. Ferguson, Esq. as the attorney for Timberlake. The parties are encouraged to consult with their own attorney concerning this agreement before signing.

V. Authority. The signators hereto acknowledge that they have the authority to act on behalf of the entity for which they are signing and have obtained all required corporate and/or statutory approvals.

SIGNATURE PAGES FOLLOW

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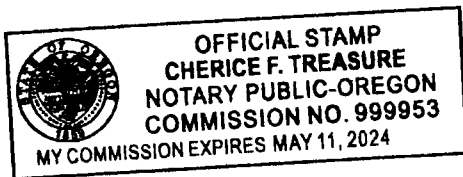
TIMBERLAKE:

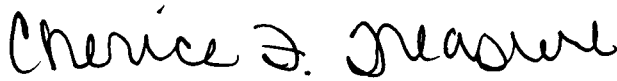
Timberlake Railroad, LLC, an Oregon limited liability company

  
\_\_\_\_\_  
John F. Vertel, Manager

STATE OF OREGON            )  
  ) ss.  
County of Klamath         )

This instrument was acknowledged before me on October 16, 2023, by John F. Vertel, as Manager for Timberlake Railroad, LLC, an Oregon limited liability company.



  
\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: 5-11-2024

VERTEL TRUST:

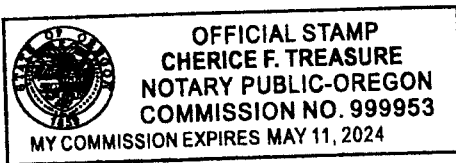
John and Ann Vertel Family Trust under agreement dated September 24, 1996


  
John F. Vertel, Trustee

  
Ann M. Vertel, Trustee

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

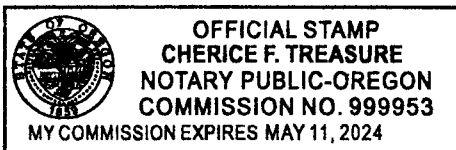
This instrument was acknowledged before me on October 16, 2023, by John F. Vertel, Trustee of the John and Ann Vertel Family Trust under agreement dated September 24, 1996.




  
Notary Public for Oregon  
My commission expires: 5-11-2024

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

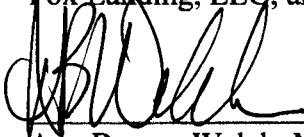
This instrument was acknowledged before me on October 16, 2023, by Ann M. Vertel, Trustee of the John and Ann Vertel Family Trust under agreement dated September 24, 1996.



  
Notary Public for Oregon  
My commission expires: 5-11-2024

FOX LANDING:

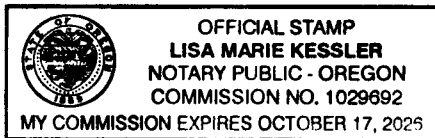
Fox Landing, LLC, an Oregon limited liability company



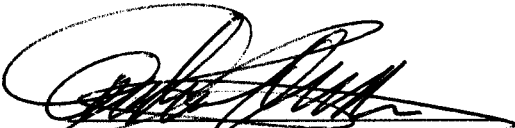
Ann Bruner-Welch, Member

STATE OF OREGON           )  
  ) ss.  
County of Klamath         )

This instrument was acknowledged before me on 9/21, 2023, by Ann Bruner-Welch, as Member for Fox Landing, LLC, an Oregon limited liability company.



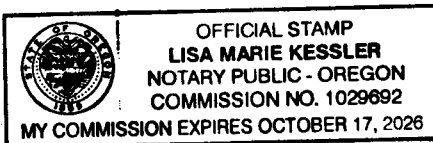
Lisa M. Kessler  
Notary Public for Oregon  
My commission expires: 10/17/2025



Don Bruner-Welch, Member

STATE OF OREGON           )  
  ) ss.  
County of Klamath         )

This instrument was acknowledged before me on 9/21, 2023, by Don Bruner-Welch, as Member for Fox Landing, LLC, an Oregon limited liability company.



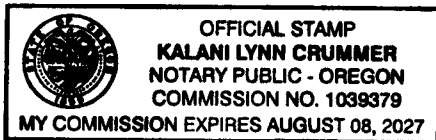
Lisa M. Kessler  
Notary Public for Oregon  
My commission expires: 10/17/2023




Richard ("Riki") Bruner, Member

STATE OF OREGON            )  
  ) ss.  
County of Klamath         )

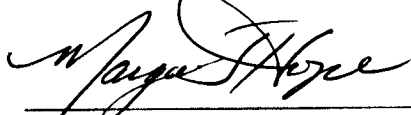
This instrument was acknowledged before me on 10/09, 2023, by Richard ("Riki") Bruner, as Member for Fox Landing, LLC, an Oregon limited liability company .



  
Notary Public for Oregon  
My commission expires: 8/8/27

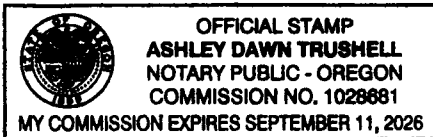
HOPE:

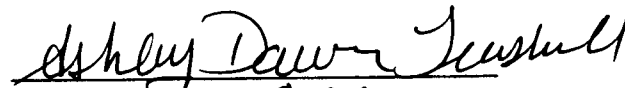
36869 Highway 62 Ltd., a British Columbian limited company

  
Margaret Hope, Owner/Managing Director

STATE OF Oregon )  
 ) ss.  
County of Klamath )

This instrument was acknowledged before me on June 6, <sup>2024</sup>~~2023~~, by Margaret Hope, as Owner/Managing Director for 36869 Highway 62 Ltd., a British Columbian limited company.



  
Notary Public for Oregon  
My commission expires: 9/11/2026



06/20/2007 11:44:33 AM

Fee: \$51.00

Recorded @ County

After recording, return to:  
Justin E. Throne  
280 Main Street  
Klamath Falls, OR 97601

### TRACKAGE EASEMENTS

This agreement is made this 1<sup>st</sup> day of June, 2007, by and between Timberlake Railroad, LLC, an Oregon Limited Liability Company ("Timberlake"), Jerry G. Balf and Louise M. Balf, Trustees of the Balf Family Trust Dated May 21, 1997 ("Balf"), and 36869 Highway 62 Ltd., a British Columbian Limited Company ("Vanderspek").

WHEREAS Timberlake owns the following parcels of property located in Klamath County, Oregon, which shall be referred to herein separately as "Timberlake West Parcels" and "Timberlake East Parcels," and are legally described as follows:

#### Timberlake West Parcels:

A parcel of land situated in Government Lot 26, in Section 5, Township 35 South, Range 7 East of the Willamette Meridian, excepting the Northwest corner, more particularly described as follows:  
BEGINNING at the Northwest corner of said Government Lot 26; thence East 834.8 feet; thence South, parallel to the West line of said lot 208.7 feet; thence West parallel to the North line of said lot 834.8 feet, to a point on the West line of said lot; thence North on said West line 208.7 feet, to the point of beginning; and

A parcel of land situated in the Northwest corner of Government Lot 26, in Section 5, Township 35 South, Range 7 East of the Willamette Meridian, more particularly described as follows:  
BEGINNING at the Northwest corner of said Government Lot 26; thence East 834.8 feet; thence South, parallel to the West line of said lot 208.7 feet; thence West parallel to the North line of said lot 834.8 feet, to a point on the West line of said lot; thence North on said West line 208.7 feet, to the point of beginning.

#### Timberlake East Parcels:

Government Lots 33 and 34, Section 4, Township 35 South, Range 7 East of the Willamette Meridian; and

A tract of land situated in Government Lots 3 and 4, Section 9, Township 35 South, Range 7 East of the Willamette Meridian, being more particularly described as follows: Beginning at the intersection of the North line of said Lot 3 and the Northerly line of Highway 422; thence North 89° 05' 29" West, 48.76 feet to the Northwest corner of said Lot 3; thence North 89° 02' 23" West on the North line of said Lot 4, 497.50 feet;

thence South 09° 24'00" East, 317.74 feet to the Northerly line of Highway 422; thence Northeasterly on said Northerly line, 584.70 feet, more or less, to the point of beginning.

WHEREAS, Balf owns a parcel of property legally described as follows:

A parcel of land situated in Government Lot 25, Section 5, Township 35 South, Range 7 east of the Willamette Meridian, Klamath County, Oregon, and more particularly described as follows:  
Commencing at the Southwest corner of said Lot 25; proceeding Northerly 250 feet, thence Easterly 660 feet, thence Southerly 250 feet, thence Westerly 660 feet to the point of beginning ("Balf Parcel").

WHEREAS, Vanderspek owns a parcel of property legally described as follows:

Lot 32 in Section 5, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon ("Vanderspek Parcel").

WHEREAS, all of the adjoining parcels described above shall herein be referred to together as the "burdened parcels" that are owned by the "burdened parties" and, where appropriate, the burdened parties shall reciprocally be referred to as the "benefited parties."

NOW THEREFORE, in consideration of \$1.00 paid by each party to the other party, and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. All of the parties grant to each other a limited easement for trackage, which is defined as the occupancy and use of any burdened parcel for access for ingress, transit, and egress upon the burdened parcel, except for in areas defined as "private trackage" in Exhibit A, which is attached hereto and incorporated by reference, to operate 7-1/2" gauge miniature railroad equipment and to walk along the track or an area five feet (5') on either side of the centerline of said track for a total of ten feet (10') of width for a single track line and fourteen feet (14') of width for a double track line.
2. For purpose of this agreement, the term "trackage" is defined to include everything constructed and resting upon, or immediately adjacent to and thereby a part of, the respective easements, and consists of, but is not limited to, plastic underlayment, track panels, switches, crossovers, road crossings, switching systems, signal systems, supplied electrical power, supplied potable water systems, signage, ballast, culverts, trestles, turntables, loading and unloading facilities, fueling facilities, bridges and tunnels that exist within the land.
3. The benefited parties agree to use the easements created by this agreement at their own risk, and further covenant to indemnify and hold harmless the burdened parties for and against any and all liability, arising from injury to person or property, occasioned

wholly or in part by any act or omission of the benefited party, or its "participants," which term is defined to include, but is not limited to, members, guests, invitees, licensees, permittees, owners, operators, riders, volunteers, observers, and agents.

4. The benefited parties agree to maintain, at all times during use of the easements, a suitable policy of general liability coverage, in an amount not less than five hundred thousand dollars (\$500,000), and if available, naming the burdened parties as additional insured parties, and to also provide evidence and a copy of said policies to all the parties.

5. Except as expressly set forth in Paragraph 6 of this agreement, the limited easements created by this agreement are personal in nature, are in gross, are not assignable, transferable, or devisable, and do not run with the land. Any easement created by this agreement that is not a permanent easement as established in Paragraph 6, and for which the burdened parcel is assigned, leased, transferred, sold, gifted, or otherwise conveyed to the ownership or control of another party, shall automatically cease and be of no further force and effect. The easements that benefit Timberlake and Vanderspek (the parties who are perpetual companies) shall not cease so long as at least fifty-one percent (51%) of each entity is owned by the parties that owned each entity at the time of this agreement; however, if any entity is owned or controlled by any individual who was an employee, officer, director, owner or manager of Train Mountain, Inc., an Oregon business corporation, or Train Mountain Railroad Museum, an Oregon non-profit corporation, at any time prior to the year 2006, that particular easement shall automatically cease and be of no further force and effect.

6. The following easements shall be permanent and perpetual and shall be appurtenant to and run with the land (in the case of Timberlake, to and with both the East Parcels and West Parcels), binding heirs, successors, and assigns:

a. Balf grants to Timberlake and Vanderspek, a non-exclusive trackage easement over the Balf Parcel to connect and use the trackage approaching the Northwest corner of the Vanderspek Parcel to trackage approaching the Southeast corner of Timberlake West Parcels; however, said easement shall not include any private trackage owned by Balf and Balf shall determine the exact route.

b. Vanderspek grants to Timberlake and Balf, a non-exclusive trackage easement over the trackage existing and installed at the date of this agreement on the Vanderspek Parcel, excepting private trackage, and a non-exclusive trackage easement to connect from the switch immediately west of the "Field Siding" to Balf's trackage approaching the Northwest corner of the Vanderspek Parcel.

c. Timberlake grants to Vanderspek a non-exclusive trackage easement to use and construct trackage that will connect to Balf's trackage near the Southeast corner of Timberlake West Parcel #13 to a point on "Train

Mountain" property between the Northwest corner of Timberlake West Parcel #14 and a point forty feet (40') east of that Northwest corner of Timberlake West Parcel #14; and Timberlake shall determine the exact route.

d. Timberlake grants to Vanderspek a non-exclusive easement to construct and use trackage beginning near the Northeast corner of Vanderspek's parcel where trackage enters Timberlake East Parcel #5, crossing Hidden Valley Road on the existing grade crossing, continuing over existing switch and track, continuing north far enough to switch to a new track that will proceed north in a ten foot (10') wide corridor thirty feet (30') to forty feet (40') from, and running parallel to, the Western boundary of Timberlake East Parcel #5 until the trackage reaches "Train Mountain" property, all as shown in Exhibit B, which is attached hereto and incorporated by reference.

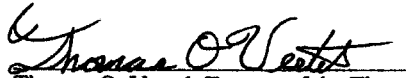
7. All trackage connections must be built according to "Train Mountain" track standards, then in place, and such new trackage that is built and constructed, and upon completion of construction, shall become the property of the parcel owner upon which the track sits.

8. The parties agree and covenant that they shall not maintain or erect fences that would block or stymie the free flow of model train traffic across the easements.

9. The parties shall equitably apportion any maintenance and repair expenses associated with the easements created by this agreement.

TIMBERLAKE:

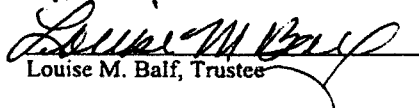
Timberlake, LLC, an Oregon limited liability company:



Thomas O. Vertel, Trustee of the Thomas O. Vertel Revocable Intervivos Trust  
Dated November 4, 2004, as Manager.

BALF:

Trustees of the Balf Family Trust Dated May 21, 1997

  
Jerry G. Balf, Trustee  
Louise M. Balf, Trustee

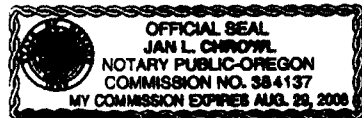
VANDERSPEK:

36869 Highway 62 Ltd., a British Columbian limited company:

Carl Vanderspek, owner/managing dir.  
Carl Vanderspek, owner/managing dir.

STATE OF OREGON, County of Klamath.

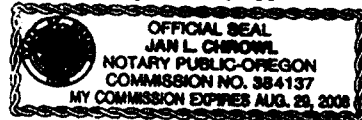
SUBSCRIBED AND SWORN TO before me this 19 day of June, 2007, by  
Thomas O. Vertel, who personally appeared.



Jan L. Chrowl  
Notary Public for Oregon  
My commission expires: 8-29-08

STATE OF OREGON, County of Klamath.

SUBSCRIBED AND SWORN TO before me this 19 day of June, 2007, by Jerry  
G. Balf, who personally appeared.



Jan L. Chrowl  
Notary Public for Oregon  
My commission expires: 8-29-08

STATE OF OREGON, County of Klamath.

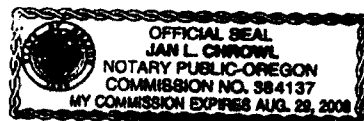
SUBSCRIBED AND SWORN TO before me this 19 day of June, 2007, by  
Louise M. Balf, who personally appeared.



Jan L. Chrowl  
Notary Public for Oregon  
My commission expires: 8-29-08

STATE OF OREGON, County of Klamath.

SUBSCRIBED AND SWORN TO before me this 19 day of June, 2007, by John  
C. Black, who personally appeared, as attorney-in-fact for Carl Vanderspek.

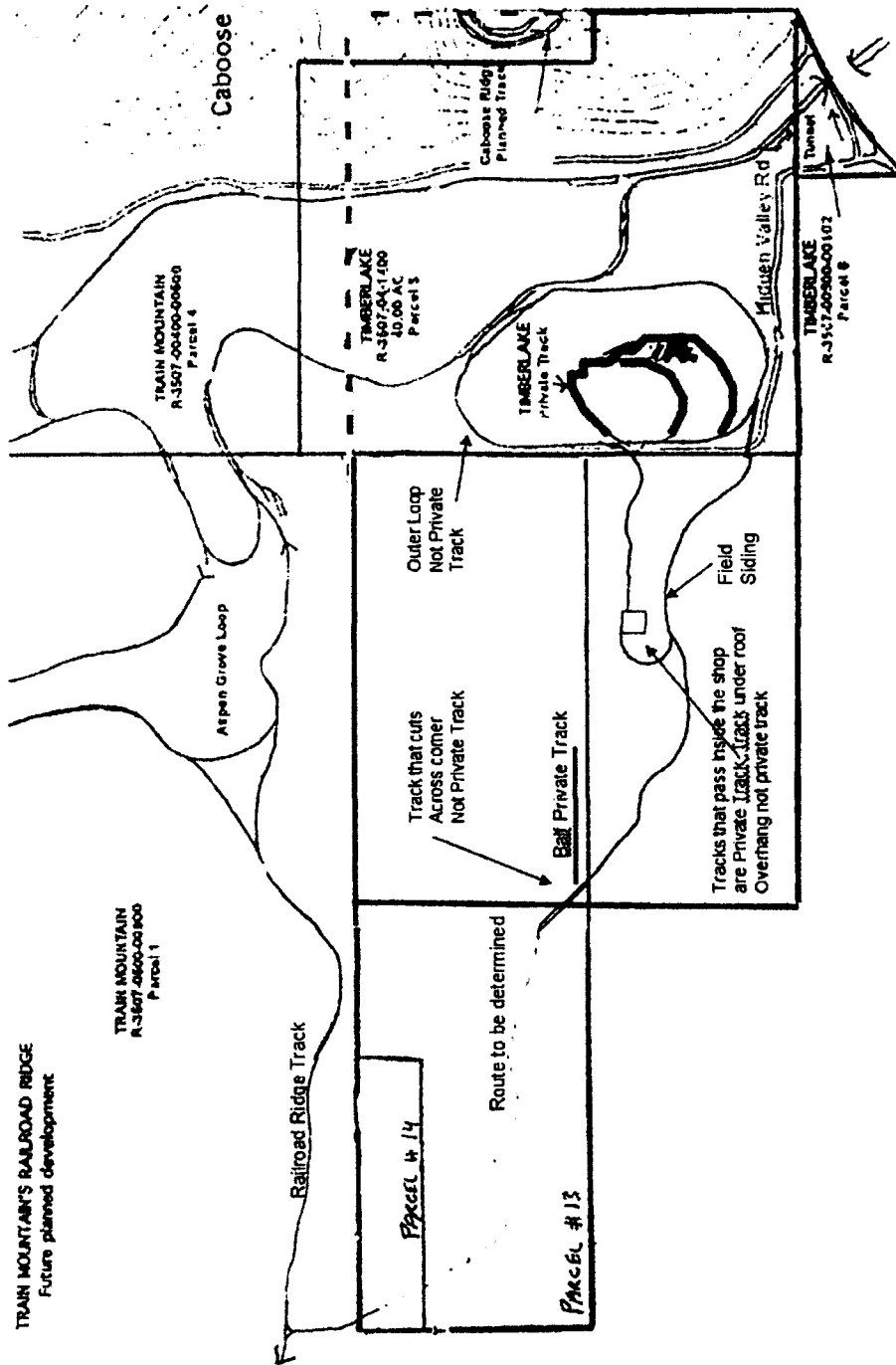


Jan L. Chrowl  
Notary Public for Oregon  
My commission expires: 8-29-08

TRACKAGE EASEMENTS

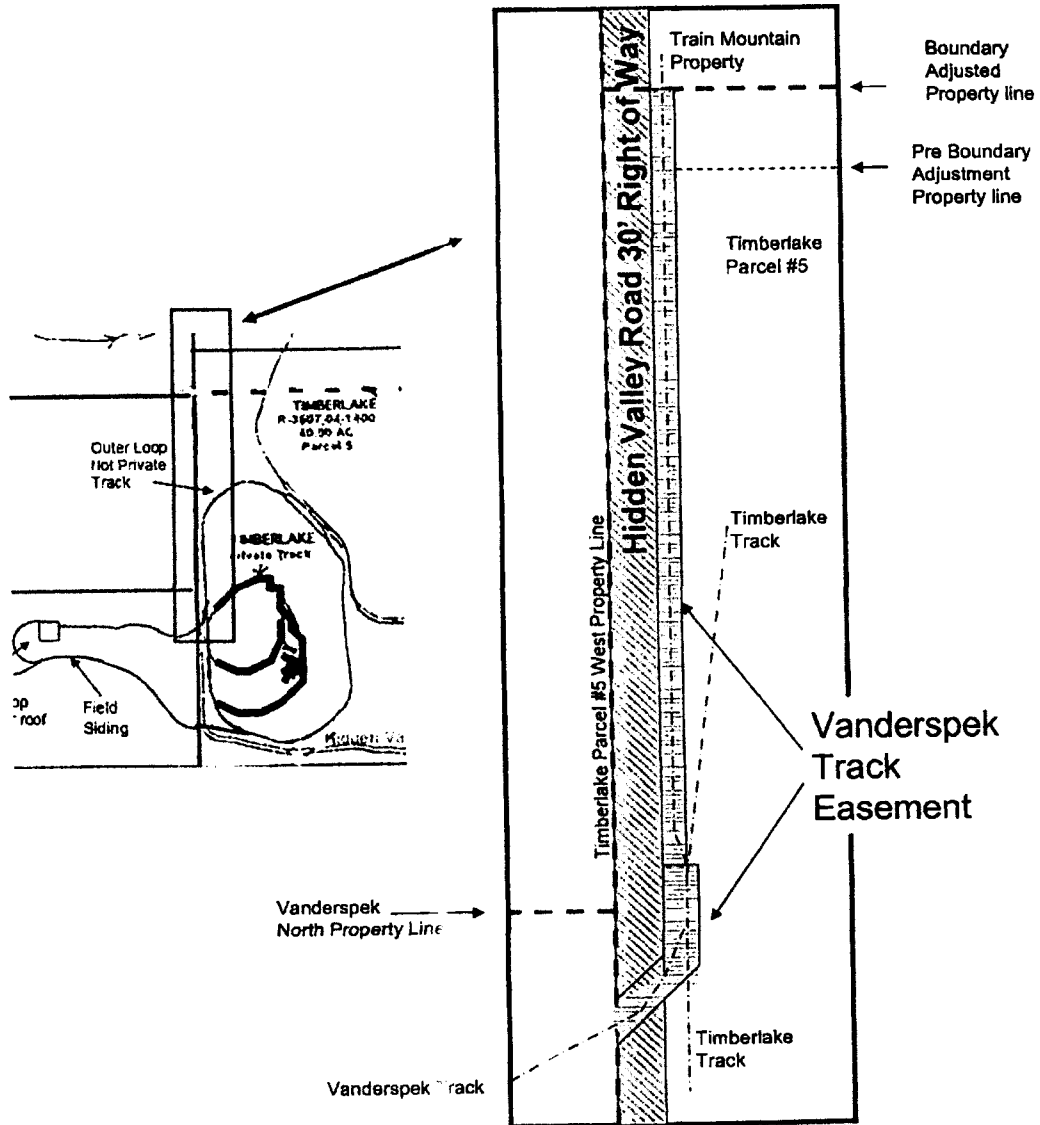
Page 5 of 5

# Trackage Easement Agreement -- Exhibit A



# Exhibit B

## Trackage Easement Agreement



# Train Mountain

R-3507-05-1200  
16.00 AC

R-3507-05-1400  
16.21 AC

R-3507-04-1400  
40.00 AC

EXHIBIT 2  
PAGE 1 OF 1

EXHIBIT 2

R-3507-05-1500  
3.79 AC

# Timberlake Railroad

R-3507-05-1600  
20.00 AC

# EXHIBIT 3

## Train Mountain 7½" Gauge Railroad Standards

### Boiler Inspection:

Certificates required to operate	Yes
Percent operating pressure	150%
Accept other club certificates	Yes
Frequency	Annual

### Rail:

Length	10'
Height	.995"
Width at foot	.937"
Main line rail type	Steel
Yard and siding type	Alum

### Bridge & Trestle Minimums:

Clearance under bridge	83"
Internal height	83"
Internal width-single track	64"
Internal width-double track	112"
Height above ground for railing	30"
Railing height	42"
Maximum opening below railing	4"
Actual shortest clearance under bridge	85"
Actual shortest internal height	83"
Actual narrowest internal width-single	64"
Actual narrowest internal width-dbl	128"

### Riding Cars:

Car type (flat, gondola, trestle)	Flat
Coupler height at coupler center	4-5/16"
Maximum seats per 6' car	1
Maximum seats per 8' car	2
Maximum seats per 10' car	3
Maximum seats per 12' car	3
Safety chain/cable	Yes
Seating surface height above rail	14½"
Seat type (bench or boat)	Boat

### Crossbucks:

Material	Aluminum
Width	4"
Length	21½"
Pole size	1¼"
Height of center above ground	72"

### Roadbed:

Distance between track centers	4'
Ditch depth if on cut	6"
Ditch width if on cut	12"
Fill height if on flat land	6"
Underlayment (fiber, plastic, none)	Plastic
Width-single track	8'
Width-double track	12'

### Curve Radius:

Main line preferred minimum	100'
Main line absolute minimum	75'
Storage track minimum	50'
Actual main line minimum	75'

### Snow Plow Cutting Edge:

Minimum height above rail	3/8"
Maximum width across track	36"
Skid plate (plastic or wood) width	2"

### Fouling Point:

Distance between track centers	34"
Marker for location	2" washer

### Steaming Bays:

Air line pipe material	½" steel
Ash pans available	Yes
Clearance to transfer or turntable	16"
Dimensions of steel C channel	1½" x 4"
Electricity-grounded	110
Height above ground	37"
Length	20'
Spacing between supports	67"
Water line pipe material	½" galv

### Grade Standards:

Maximum	2.0%
Better	1.5%
Best	1.0%
Actual steepest grade-avoidable	3.29%
Actual steepest grade-unavoidable	2.67%
Actual next steepest grade	2.65%
Actual next steepest grade	2.18%
Actual next steepest grade	2.06%

### Switch minimum radius:

Main line divergence	100'
All other main line	75'
Sidings	75'
To dead end storage tracks	50'

### Grade Crossings:

Crossing width-single track	24"
Crossing width-double track	96"
Concrete depth	24"
Flangeway depth	¾"
Flangeway width	1½"
Rail material	Steel
I beam dimensions	2¼" x
Actual narrowest crossing width	24"
Actual narrowest flangeway depth	½"
Actual shallowest flangeway width	¾"

### Switch stand minimum distances:

From track centerline	24"
To remote switch throw	40"

### Mileposts:

Distance between	105.6
Grade information to next post	Yes
Height of bottom above ground	12"
Interval	0.2 mi
Other information	Grade
Posts per mile	50
Scale (actual or scale miles)	Actual
Size	2" x 3"

### Tie Dimensions:

Width	2"
Depth	3"
Length	16"
Distance between tie centers	4"
Space between ties	2"
Material	Plastic

### Track Gauge:

Nominal gauge	7½"
Actual gauge tangent track	7-5/8"
Actual gauge curve track	7-5/8"
Actual gauge at switch	7½"

**Passing Sidings:**

Minimum distance between	3000'
Minimum length	140'
Minimum length of storage track	12'
Storage track for bad order cars	Yes

**Public Train Rides:\***

Admission (free or pay)	Free
Conductor at end of train	Yes
Conductor have flag & whistle	Yes
Distance covered by public ride	7,600'
Donation box at entrance	Yes
Donation box at exit	Yes
Donation average per ride given	US \$.00
Duration of public ride in minutes	17
Insurance cost per annum	US \$0,000
Rides given per run day (average)	000
Safety speech before each trip	Yes
Speed for public rides	5 mph
Ticket cost per ride	N/a

**Track panel construction:**

Rail joiner-TM slip on type	Yes
Rail joiner-bars, bolts & nuts	No
Rail length	10'
Rail offset	12"
Ties per panel	30
Tie plate	Yes
Track gauge	7-5/8"
Screw head	Phillips
Screw length	1"
Screws per panel	123

**Train Operating Requirements:**

Boiler certificate for steamers	Yes
Flagger with 12" x 12" flag/lantern	Yes
Green blocks for derailment sites	Yes
Headlight on locomotive at night	Yes
Radio equipped (FRS)	Yes
Red light on rear of train at night	Yes
Safety chains or drawbars	Yes
Spark arrestor/ashpan for steamers	Yes
Speed limit unless posted	7 mph
Train length maximum	140'
Train separation	210'
Whistle at grade crossings	Yes

**Tunnel minimum dimensions:**

Internal width-single track	64"
Internal width-double track	112"
Internal height	83"
Portal width-single track	48"
Portal width-double track	96"
Portal height	83"
Actual narrowest internal-single	56"
Actual narrowest internal-double	144"
Actual lowest internal height	77"
Actual narrowest portal width	44"
Actual lowest portal height	73"

\*Conducted by Klamath & Western Railroad

TM Railroad Standards  
Revised Jan 1, 2008