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02/19/2019 02:19 PM Pages: 1 of 11 Fees: \$109.00  
Skagit County Auditor

After recording return to:

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

FEB 19 2019

Amount Paid \$  
Skagit Co. Treasurer  
By *hlm* Deputy

Document Title:

KIEWIT TEMPORARY ROAD ACCESS  
EASEMENT AGREEMENT

Grantor:

SIERRA PACIFIC LAND & TIMBER COMPANY

Grantee:

KIEWIT INFRASTRUCTURE CO.

Legal Description:

Assessor's Parcel/I.D. Number:

P46200 & P46194 GUARDIAN NORTHWEST TITLE CO.

*19/35/11 et al*

*12-1412*

### KIEWIT TEMPORARY ROAD ACCESS EASEMENT AGREEMENT

THIS TEMPORARY ROAD ACCESS EASEMENT AGREEMENT ("Easement Agreement") is made this 19<sup>th</sup> day of February, 2019, by and between **SIERRA PACIFIC LAND & TIMBER COMPANY**, a California corporation, ("Grantor"), and **KIEWIT INFRASTRUCTURE COMPANY**, a Delaware Corporation ("Grantee") (collectively, KIC and SPL&T are referred to herein as the "Parties").

**WHEREAS**, pursuant to a Purchase Agreement between the Parties dated February 19, 2019 (the "Agreement"), Grantor has agreed to grant to Grantee, subject to the terms of this Easement Agreement, a temporary road access easement (the "Easement") across Parcels P46194 and P46200 as depicted on Exhibit "A", attached hereto, for the benefit of current Parcels P45541, P45548, P45543 and P128574.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to execute the Easement as follows:

1. **GRANT OF EASEMENT, Segment 1.** The Grantor hereby grants to the Grantee, the temporary, non-exclusive Easement across, along, in, and upon the burdened property along an existing forest road, as depicted on Exhibit "A" attached hereto, for the purpose of ingress and egress to the benefitted properties, subject to the terms of this Easement Agreement. The width of the Easement shall be 20 feet either side of the centerline of such existing forest road.

2. **DURATION.** The Easement granted herein shall be temporary in duration, shall be a covenant running with the land, and is given by one Party to the other, and to their successors and assigns. The Easement shall terminate at midnight on December 31, 2021, with no further action required by either of the Parties.

3. **USE.** The Grantee shall use the Easement for access to and from the benefitted properties described in Exhibit B, provided that the Grantees use of the Easement and the maintenance of the Easement shall not unreasonably interfere with the Grantor's use of the property burdened by this Easement. Said access by Grantee is for the purposes of property management and administration and construction of roads on Grantee's benefitted property, but not for hauling of any kind. Grantor reserves the right at all times and for any purpose to cross and recross at any place on grade or otherwise on said Easement in a manner which will not unreasonably interfere with the rights granted to Grantee herein.

Each Party hereto may permit its respective agents, contractors, licensees, lessees, purchasers of timber or other valuable materials, and their agents, hereinafter individually referred to as a "Permittee" and collectively referred to as "Permittees," to exercise the rights granted to it herein.

4. **IMPROVEMENTS AND MAINTENANCE.** Grantee shall have the right to make any reasonably necessary improvements to the Easement for the benefit of the Grantee at Grantee's sole cost. All improvements within the Easement shall be consistent with applicable local, state, or federal laws and regulations.

5. **MAINTENANCE.** The cost of road maintenance and resurfacing shall be allocated on the basis of respective use of said road. When any Party uses the road, that Party shall perform or cause to be performed, or contribute or cause to be contributed, that share of maintenance and resurfacing necessary as a result of such use by such Party as hereinafter provided. During periods when the road is being used solely by one Party, such Party shall maintain that portion of said road so used to at least the standards existing at the time use is commenced.

During periods when more than one Party is using the road, or any portion thereof, the Parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but are not limited to:

- a) The appointment of a maintainer, which may be one of the parties hereto or any third Party, who will perform or cause to be performed at a reasonable and agreed upon rate the maintenance and resurfacing of the road or the portion thereof being used; and
- b) A method of payment by which each Party using said road or a portion thereof, shall pay its pro rata share of the cost incurred by said maintainer in maintaining or resurfacing said road or portion thereof.

For purposes of this Easement Agreement, maintenance is defined as work normally necessary to preserve and keep the roadway, road structure, and road facilities as nearly as possible in their present condition or as hereafter specified to be improved. This definition includes but is not limited to the following: grading, ditching, minor culvert replacement, brush cutting, dust abatement, surface patching, surface rock replacement,

asphalt repair and replacement, gate repair, small slide repair, and structure maintenance. In addition, the Parties recognize that the construction, maintenance, and improvement of said road will likely be governed by applicable regulations of governmental agencies controlling the same.

6. **REPAIRS.** Each Party using any portion of the Easement shall repair, or cause to be repaired, at its sole cost and expense, that damage to said roadway caused by it which is in excess of what it would cause through normal and prudent use of said road. Should extraordinary damages (including but not limited to large slides, or road prism failures greater than 100 yards<sup>3</sup>, large drainage structure replacements of bridges or culverts 48 inches and larger, and specified road segment drainage structure updates) to the road occur which is not caused by an authorized user of said road, the Parties hereto shall meet to agree to repair the road, the cost of such repair, the Party to undertake the repair, and the share of repair costs to be borne by each Party on the basis of each Party's tributary acres beyond the point of damage at the time the damage occurs. Unless the Parties hereto do agree in writing as to each of the foregoing in advance of such repairs being made, then no repairs shall be made, or if such repairs are undertaken by one of the Parties, then all costs of such repairs shall be borne solely by that Party.

7. **FIRE.** Grantor reserves the right to impose on Grantee temporary closure of the Easement or restriction of specific uses during times of high fire danger. In addition, the Parties acknowledge that the use of the Easement may be subject to a temporary fire shutdown as determined by the applicable governmental agencies controlling the same.

8. **GATES.** Grantor and Grantee shall be provided access to and through any gates located by either the Grantor or Grantee on any portion of the Easement.

9. **NOT A PUBLIC DEDICATION.** This grant is not a public dedication, and the public shall not have access to this Easement. It shall be the Grantee's affirmative obligation to restrict public access to the Easement.

10. **INDEMNIFICATION.** Grantee shall indemnify, defend, and save harmless the Grantor from any claim or loss by reason of the Grantee's use or misuse, including negligence, of the Easement and from any claim or loss by reason of any accident or damage to any person or property happening within the Easement to the extent such damage is caused by the acts, negligence, willful misconduct or omissions by the Grantee. Grantor shall indemnify, defend and save harmless the Grantee from any claim or loss by reason of the Grantor's use or misuse, including negligence, of the Easement and from any claim or loss by reason of any accident or damage to any person or property happening within the Easement to the extent such damage is caused by the acts, negligence, willful misconduct or omissions of the Grantor.

11. **INSURANCE.**

a) At all times during the term of this Easement Agreement, Grantee shall procure and maintain, at its own expense, all of the following coverage and in the amounts described below:

(i) Workers' Compensation insurance, which includes a waiver of subrogation if jurisdictionally permissible, conforming to all applicable statutory requirements of the State of Washington;

(ii) Regardless of the minimum statutory requirements of the State of Washington, Stop Gap Liability Insurance (Employer's Contingent Liability Insurance) which includes a waiver of subrogation if jurisdictionally permissible, with minimum limits of no less than \$1,000,000;

(iii) Commercial General Liability ("CGL") insurance shall be maintained with minimum limits of \$1,000,000 each occurrence; and \$1,000,000 General Aggregate. CGL insurance shall include a waiver of subrogation if jurisdictionally permissible, be written on ISO occurrence form CG 00 01 or equivalent and shall cover liability arising from premises, operations, completed operations, independent contractors, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Such CGL insurance shall name and include Grantor and all parents, subsidiaries and affiliates of Grantor, and their respective officers, directors, agents and employees (all of the foregoing collectively, the "Additional Insureds"), as additional insureds using ISO additional insured endorsements CG 20 10 04 13, or its equivalent, and CG 20 37 04 13, or its equivalent; and

(iv) Commercial Automobile Liability ("CAL") insurance shall be maintained with minimum limits of \$1,000,000 per accident. CAL insurance shall include a waiver of subrogation if jurisdictionally permissible and shall include coverage for any owned, non-owned, leased or hired vehicle written on an insurance industry standard form (CA 00 01) or equivalent. Such CAL insurance shall name and include the Additional Insureds as additional insureds.

b) All policies and coverage procured by Grantee as required herein (collectively, "Policies") shall include a separation of insureds clause. The Policies shall not include a deductible in excess of \$10,000 per loss without Grantor's written approval. The Policies shall be endorsed to include (i) a waiver of subrogation where required, (ii) for any coverage as to which any Additional Insured is named and included as an Additional Insured, a provision that specifies the Policies are primary and that any insurance or self-insurance maintained by Grantor or any other Additional Insured shall not contribute with it and (iii) that the applicable waiver of subrogation shall not affect the Grantor's right, or any other Additional Insured's right, to recover under such insurance policy. If Grantor or any other Additional Insured has other insurance that is applicable to any loss on an excess or contingent basis, the amount of Grantee's liability under the Policies cannot be reduced by the existence of such other insurance. Grantee shall provide Grantee's insurance agent or broker with a complete copy of all insurance requirements set forth in this Section 11.

c) All Policies described shall be procured to the satisfaction of Grantor and shall be underwritten by an insurer acceptable to Grantor (must be rated A-: VII or better in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington). At Grantor's election, Grantor shall be entitled to inspect original Policies or require complete certified copies of Policies at any time. Prior to commencement of use of the Easement by Grantee, Grantee shall furnish Grantor with certificates of insurance

and endorsements of all required insurance for Grantee. Such certificates of insurance shall provide that the coverage required herein shall not be cancelled or reduced except by written notice to Grantor, giving at least thirty (30) days prior to the effective date of such cancellation or reduction. In the event the coverage evidenced by any such certificate is cancelled or reduced, Grantee shall procure and furnish to Grantor, before the effective date of such cancellation or reduction, a new certificate conforming to the above requirements. If Grantee has failed for any reason to secure the Policies to the satisfaction of Grantor upon execution of this Easement Agreement, or if Grantor has not been furnished a certificates of insurance as aforesaid within twenty (20) days from written request by Grantor for such certificates of insurance, then Grantor shall have the right, in addition to any other remedy available to it, to secure any or all of said Policies and Grantee shall reimburse Grantor for the cost of any such Policies within ten (10) days after written request by Grantor.

d) Grantee shall require any subcontractors to maintain in full force and effect commercially reasonable insurance coverage substantially similar in form and substance to the insurance coverage required of Grantee in this Section 11, including applicable waiver of subrogation and additional insured requirements, as appropriate to the nature of subcontractors' operations, each with minimum limits of no less than \$1,000,000 each occurrence and/or general aggregate, as applicable, unless otherwise agreed to by Grantor in writing. Grantee shall be solely responsible for monitoring compliance by such subcontractors with the aforementioned insurance requirements.

e) Notwithstanding any other provision of this Easement Agreement, and separate and apart from any obligation of Grantee to indemnify, if Grantee's insurance carrier fails or refuses to defend or indemnify pursuant to an additional insured endorsement because of a failure to obtain an additional insured endorsement, policy deductible, self-insured retention or unauthorized coverage deletion, Grantee shall stand in the place of its insurer and defend and indemnify to the same extent that an insurer issuing the coverage as required herein would under applicable law.

(f) All insurance certificates or other evidence of coverage required to be submitted to Grantor pursuant to this Section 11 shall be sent to:

Sierra Pacific Industries  
PO Box 496014  
Redding, CA 96049  
ATTN: Insurance Administrator  
E-Mail: insurance@spi-ind.com

12. **GENERAL TERMS.**

- A. **Incorporation of the Agreement.** The terms and conditions of the Agreement, including Section C, General Terms, are incorporated herein as if fully set forth herein.
- B. **Benefit; Liability.** This Easement and all of the terms, covenants, and conditions hereof shall extend to the benefit of and be binding upon the respective successors, successors in trust, and assigns of the Parties hereto.


C. **Exhibits.** All exhibits attached hereto are incorporated by reference as if fully set forth herein.

D. **Entire Agreement.** The entire agreement as to the Easement is contained in this Easement Agreement. This Easement Agreement together with the Agreement supersede all of the Parties' previous understandings and agreements, written and oral, with respect to this Easement. Neither SPL&T nor KIC shall be liable to the other for any representations made by any person concerning the Easement or regarding the terms of this Easement Agreement or the Agreement, except to the extent that the same are expressed in this Easement Agreement or the Agreement. This Easement Agreement may be amended only by written instrument executed by SPL&T and KIC subsequent to the date hereof. The terms used in this Easement Agreement are defined herein or in the Agreement. This Easement Agreement is to be interpreted as implementing, not controlling the Agreement. In the event of a conflict between this Easement Agreement and the Agreement, the Agreement shall control.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Easement on the day and year first above written.

**KIEWIT INFRASTRUCTURE CO.**

**SIERRA PACIFIC LAND & TIMBER  
COMPANY**

  
By: \_\_\_\_\_  
Its: Estimating Director

By: M D Emmerson  
Its: Chairman and CFO

F:\CLIENTS 1-Q\Kiewit Infrastructure West Co\Marblemount Mine\Sierra Pacific Transaction (subfile)\Draft Transaction Docs\Road Access Easement\Road Easement 1 of 3 Redlined by SPI02-01-19 JS 2-4-19.doc

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**KIEWIT INFRASTRUCTURE CO.**

**SIERRA PACIFIC LAND & TIMBER  
COMPANY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

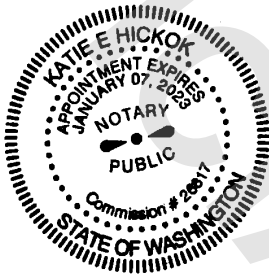
  
By: George R. Emmerson  
Its: President

F:\CLIENTS\1-Kiewit Infrastructure West Co\Marblemount Mine\Sierra Pacific Transaction (subfile)\Draft Transaction Docs\Road Access Easement\Road Easement 1 of 3 Redlined by SPI 02-01-19 JS 2-4-19.doc

STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF Skagit )

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, Charles Nylund, to me known to be the Estimating Director of KIEWIT INFRASTRUCTURE COMPANY, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument on behalf of the corporation.

2019 GIVEN under my hand and official seal this 15<sup>th</sup> day of February.



Katie E. Hickok  
 Print Name: Katie E. Hickok  
 NOTARY PUBLIC in and for the  
 State of Washington, residing at Mt Vernon  
 My commission expires: 1-7-23

STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, \_\_\_\_\_, to me known to be the \_\_\_\_\_ of SIERRA PACIFIC INC., and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument on behalf of the corporation.

201\_\_\_\_ GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 NOTARY PUBLIC in and for the  
 State of Washington, residing at \_\_\_\_\_  
 My commission expires: \_\_\_\_\_



**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

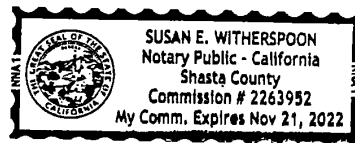
County of Shasta)

On February 15, 2019 before me, Susan E. Witherspoon, Notary Public  
(insert name and title of the officer)

personally appeared George R. Emmerson  
who 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/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

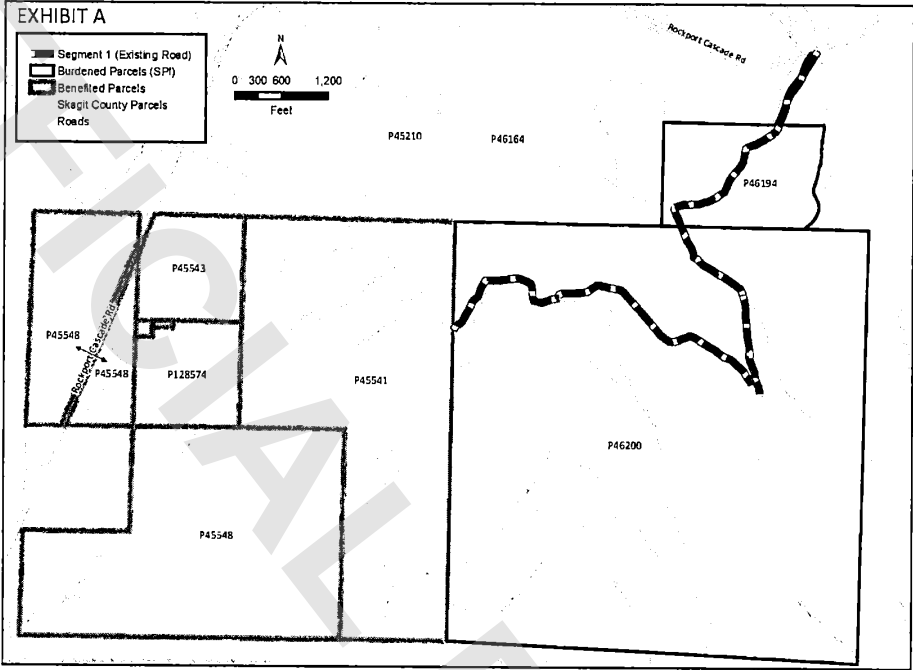
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Susan E. Witherspoon (Seal)

EXHIBIT "A"  
DEPICTION OF THE EASEMENT AND BENEFITTED/BURDENED PROPERTY



**EXHBIT "B"**  
**LEGAL DESCRIPTION OF BENEFITTED AND BURDENED PROPERTIES**

**Grantor's Burdened Property**

SECTION 19, TOWNSHIP 35 NORTH, RANGE 11 EAST, W.M. AND THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 35 NORTH, RANGE 11 EAST, W.M.

SITUATE IN THE SKAGIT COUNTY, STATE OF WASHINGTON

**Grantee's Benefitted Property**

THE WEST HALF OF THE NORTHWEST QUARTER AND THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 35 NORTH, RANGE 10 EAST, W.M.

EXCEPT ROAD RIGHT OF WAY

THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTH HALF OF THE SOUTHWEST QUARTER AND THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 35 NORTH, RANGE 10 EAST, W.M.

EXCEPT ROAD RIGHT OF WAY

THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 35 NORTH, RANGE 10 EAST, W.M.

EXCEPT ROAD RIGHT OF WAY

GOVERNMENT LOTS 1, 2, 3, AND 4 AND THE WEST HALF OF THE NORTHEAST QUARTER ALL IN SECTION 24, TOWNSHIP 35 NORTH, RANGE 10 EAST, W.M.

SITUATE IN THE SKAGIT COUNTY, STATE OF WASHINGTON.