

Return Address:

Skamania County Prosecutor

<i>Document Title(s) or transactions contained herein:</i>  Release & Settlement Agreement
<i>GRANTOR(S) (Last name, first name, middle initial)</i>  Kellems, Van II  <input type="checkbox"/> Additional names on page _____ of document.
<i>GRANTEE(S) (Last name, first name, middle initial)</i>  Skamania County  <input type="checkbox"/> Additional names on page _____ of document.
<i>LEGAL DESCRIPTION (Abbreviated: i.e., Lot, Block, Plat or Section, Township, Range, Quarter/Quarter)</i>  SW4 Section 34 Township 4 North Range 10 EWM  <input checked="" type="checkbox"/> Complete legal on page <u>5</u> of document.
<i>REFERENCE NUMBER(S) of Documents assigned or released:</i>    <input type="checkbox"/> Additional numbers on page _____ of document.
<i>ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER</i>    <input type="checkbox"/> Property Tax Parcel ID is not yet assigned <input type="checkbox"/> Additional parcel numbers on page _____ of document.
The Auditor/Recorder will rely on the information provided on the form. The Staff will not read the document to verify the accuracy or completeness of the indexing information.

After recording, return to:

John R. Briscoe  
P.O. Box 249  
Vancouver, WA 98666

Tax Lot \_\_\_\_\_  
Section \_\_\_\_, T \_\_\_\_, R \_\_\_\_

Space Above for Recording Information Only

**RELEASE AND SETTLEMENT AGREEMENT**

**A. PARTIES:**

1. Van Kellems II (hereinafter "Kellems").
2. Skamania County, a municipal entity (hereinafter "County").

**B. RECITALS:**

1. Kellems owns property located in Klickitat County, Washington, near Skamania County.
2. The parties had a dispute as to whether a road on Kellems property was private or public.
3. The Kellems property is legally described on the Attached Exhibit "A".
4. On July 1, 2003, Kellems filed an action in the Clark County Superior Court against County, Case No. 03-2-03465-1. The case was transferred to Klickitat County Superior Court on June 29, 2004, under Case No. 04-2-00239-2.
5. At this time, Kellems and County wish to fully and finally settle this matter.
6. It is the intent of the parties that these recitals be, and are, a part of this Agreement.

**C. AGREEMENT:**

In consideration of the mutual covenants contained herein and other good and valuable consideration, Kellems and County agree as follows:

1. Kellems agrees to grant an easement for emergency ingress and emergency egress through his property on his existing driveway to the general public, such easement is attached hereto as Exhibit B.
2. Kellems agrees to grant a license for use of the existing driveway for recreational purposes, such license is attached hereto as Exhibit C.
3. County agrees to quitclaim, vacate or relinquish any interest in any private or public roadway over and across Kellem's property.
4. Upon signatures of all parties, the parties agree to voluntary dismissal of the suit filed in Clark County Superior Court under Case No. 03-2-03465-1 and transferred to Klickitat County as Case No. 04-2-00239-2, with prejudice and without costs or fees to either party.
5. County, on behalf of itself, and its successors and assigns, voluntarily and in good faith release and forever discharge Kellems from all claims (legal or equitable, known or unknown), liability, rights of action, damages, costs, attorney's fees and expenses, now existing or which may hereafter arise, be discovered, or relate to their properties, easements, or any other related issues.
6. Kellems, on behalf of himself, and his heirs and assigns, voluntarily and in good faith release and forever discharge County from all claims (legal or equitable, known or unknown), liability, rights of action, damages, costs, attorney's fees and expenses, now existing or which may hereafter arise, be discovered, or relate to their properties, easements, or any other related issues.
7. By their signatures hereto the parties acknowledge and declare that this Agreement has been fully read and understood to be a complete and final compromise made in full release, satisfaction, and discharge of all claims, known or unknown, the payment is made and accepted voluntarily as full compensation, satisfaction, and release of all claims between the parties, and this instrument contains the entire agreement of the parties. All parties agree that any ambiguities or interpretations regarding the drafting of this Agreement shall not be construed against the drafter.

8. The parties have independently consulted counsel regarding the execution of this Agreement, and make this Agreement with full knowledge of its effect. This Agreement is fully enforceable upon signatures of all parties.
9. In the event of a default under the terms of this Agreement, and if action is taken to enforce the terms of this Agreement, the prevailing party shall be entitled to his reasonable attorney's fees and costs in enforcing its terms, including such costs of appeal.
10. This document may be executed in counterparts, and facsimile signatures shall be deemed original signatures.
11. The execution of this Agreement shall not be deemed an admission of liability by any party and shall not be construed as such. This Agreement is being executed for the sole purpose of amicably resolving the conflicting claims and disputes described herein.
12. The parties agree that the laws of the State of Washington shall control any interpretation or construction of this Agreement. Any action to enforce this Agreement shall be instituted exclusively in the Clark County Superior Court, Vancouver, Washington.

IN WITNESS WHEREOF the parties have executed this document on the day and year below written.

12/6/2005  
Date

V. G. Kellem  
VAN KELLEMS II

SKAMANIA COUNTY

Robert E. McKee  
Commissioner

Commissioner

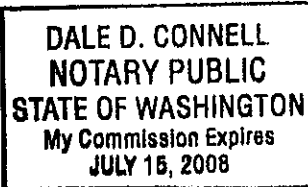
Approved as to Form:


Peter S. Banks  
PETER S. BANKS  
Skamania County Prosecuting Attorney

STATE OF WASHINGTON )  
 ) ss.  
County of Klickitat )

I certify that I know or have satisfactory evidence that VAN KELLEMS II signed this instrument, on oath stated it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 12/6/05, 2005.

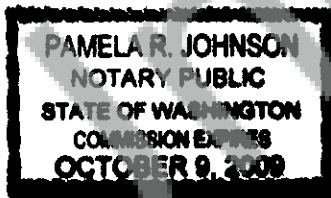



  
NOTARY PUBLIC for the State of Washington,  
Residing in the County of ~~Clark~~ Klickitat  
My Commission Expires: July 15, 2008

STATE OF WASHINGTON )  
 ) ss.  
County of Skamania )

I certify that I know or have satisfactory evidence that Albert E. McKee signed this instrument, on oath stated that he/she was authorized to execute this instrument and acknowledged it as one of the Commissioners of Skamania County, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 12/19, 2005.



  
NOTARY PUBLIC for the State of Washington,  
Residing in the County of ~~Clark~~ Skamania  
My Commission Expires: 10/9/09

## **EXHIBIT A**

The East half of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter and the North half of the Southeast quarter of the Southwest quarter in Section 34, Township 4 North, Range 10 East, of the Willamette Meridian, in the County of Klickitat and State of Washington.

Unofficial  
Copy

After recording, return to:

John R. Briscoe  
P.O. Box 249  
Vancouver, WA 98666

Tax Lot 04103400000400  
Section 34, T4N, R10E

Space Above for Recording Information Only

Exhibit B

**EASEMENT**

VAN KELLEMS II, a married person owning property as his separate estate (hereinafter "Grantor"), for valuable consideration, hereby grants to the GENERAL PUBLIC (hereinafter "Grantee"), an easement for ingress and egress for emergency access only, and maintenance thereon not to exceed once a year grading and vegetation clearing as needed, such emergency shall be as established by Skamania County because of an immediate threat to public health or safety, the following described property:

The existing, improved roadway that crosses the Grantor's property, (legally described in Exhibit A) which connects Little Buck Creek Road in Skamania County, such easement is not to exceed fifteen feet on each side of existing centerline, as it existed May of 2003 as shown in Exhibit B.

This easement shall run with the land.

IN WITNESS WHEREOF, this instrument is signed this 6<sup>th</sup> day of DECEMBER 2005.

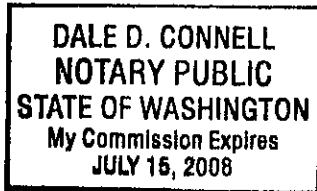
12/6/2005  
Date

Van G Kellem II  
VAN KELLEMS II

STATE OF WASHINGTON )  
County of ~~Clark~~ Klickitat ) ss.

I certify that I know or have satisfactory evidence that VAN KELLEMS signed this instrument, on oath stated it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: Dec 6th, 2005.



Dale D. Connell  
NOTARY PUBLIC for the State of Washington,  
Residing in the County of ~~Clark~~ Klickitat  
My Commission Expires: July 15, 2008

EASEMENT - 2

C:\John Briscoe\Clients\Kellems\KELV01-000001\Easement 11-17-05.doc

LAW OFFICES OF  
LANDERHOLM, MEMOVICH,  
LANSVERK & WHITESIDES, P.S.  
805 Broadway Street, Suite 1000  
P.O. Box 1086  
Vancouver, Washington 98666  
(360) 696-3312

DOC # 2005160074  
Page 8 of 15



## EXHIBIT A

The East half of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter and the North half of the Southeast quarter of the Southwest quarter in Section 34, Township 4 North, Range 10 East, of the Willamette Meridian, in the County of Klickitat and State of Washington.

Unofficial  
Copy

Exhibit C

**LICENSE AGREEMENT**

Agreement made, effective as of Dec. 27<sup>th</sup>, 2005, by and between Van Kellems of P.O. Box 1308 White Salmon, WA 98672, hereinafter referred to as licensor, and Citizens and Friends of Skamania County, State of Washington; (provided that any individual using this license shall sign a separate license agreement with identical terms at request of Licensor) hereinafter referred to as licensee.

The parties agree as follows:

**SECTION ONE**

**GRANT OF PERMISSION**

In consideration of licensee's promises contained in this agreement, licensor hereby gives permission, revocable and terminable as provided below, to licensee to enter on the real property of licensor described below for recreational purpose of using trail for horseback riding, walking or mountain biking; all on the terms and conditions set forth in this agreement, all of which licensee promises to comply and abide with.

**SECTION TWO**

**DESCRIPTION OF PROPERTY**

The real property of licensor that licensee is permitted to enter under and pursuant to this agreement is described as follows: See Attached Exhibit A.

### **SECTION THREE**

#### **NO MONETARY CONSIDERATION**

The permission granted to licensee under this agreement is given to licensee as an accommodation to licensee and it shall be without charge to licensee. Licensee hereby acknowledges the title of licensor to the above-described real property and agrees never to assail, resist, or deny such title.

### **SECTION FOUR**

#### **PROTECTION OF VEGETATION**

Licensee shall not cut, mutilate, or injure, or permit any of licensee's guests, invitees, or licensees to cut, mutilate, or injure any growing trees, shrubbery, or vegetation on the above-described property of licensor; Provided that Skamania County may clear vegetation for maintenance not to exceed twenty (20) feet in width and fourteen (14) feet in height.

### **SECTION FIVE**

#### **NO COMMERCIAL USE OR NUISANCE**

A. Licensee shall not use the above-described property for commercial purposes, and shall not perform or permit any of licensee's guests, invitees, or licensees to perform any disorderly conduct or commit any nuisance on such property or to use such property in any way so as to interfere with the exercise by other licensees or permittees of privileges that licensor may give them in such property.

B. Licensee shall not keep as a guest, invitee, or licensee any person objectionable to licensor of the above-described property.

## **SECTION SIX**

### **FIRE PROTECTION; SANITATION**

Licensee shall comply with all rules and regulations, whether federal, state, county, or municipal, relating to the use of the above-described property.

## **SECTION SEVEN**

### **INDEMNIFICATION**

Licensee shall exercise its privileges under and pursuant to this agreement at its own risk, and, irrespective of any negligence of licensor, licensee shall indemnify, hold licensor harmless and defend from and against any and all liability for damages, costs, losses, and expenses resulting from, arising out of, or in any way connected with, the use of the above-described property by licensee, or the licensees, invitees, or guests of licensee, or failure on the part of licensee to perform fully all and singular licensee's promises contained in this agreement. Licensor shall not be liable to licensee if for any reason whatever licensee's use of the property under and pursuant to this agreement shall be hindered or disturbed.

## **SECTION EIGHT**

### **PRIVILEGE NOT ASSIGNABLE**

Licensee's privileges under this agreement shall not be assignable by licensee in whole or in part.

## **SECTION NINE**

### **TERMINATION**

Licensors reserves the right to terminate the permission granted by this agreement upon the misuse of the property by the licensee, such termination shall be effective as to offending parties only.

## **SECTION TEN**

### **GOVERNING LAW AND VENUE**

It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Washington and any dispute concerning this agreement shall be decided in the courts of Clark, County Washington unless otherwise agree.

## **SECTION ELEVEN**

### **NO WAIVER**

The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

## **SECTION TWELVE**

### **ATTORNEY FEES**

In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fees.

## **SECTION THIRTEEN**

### **EFFECT OF PARTIAL INVALIDITY**

The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

## **SECTION FOURTEEN**

### **ENTIRE AGREEMENT**

This agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

## SECTION FIFTEEN

### MODIFICATION OF AGREEMENT

Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

In witness whereof, each party to this agreement has caused it to be on the date indicated below.

DATED this 27<sup>th</sup>, of DECEMBER, 2005.



\_\_\_\_\_  
Van Kellems, Licensor

\_\_\_\_\_  
Licensee